UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE JOHN A. KRONSTADT

UNITED STATES DISTRICT JUDGE PRESIDING

- - -

SIGNAL IP, INC.,	
	CV14-02457-JAK
PLAINTIFF,	CV14-02454-JAK
	CV14-03111-JAK
VS.	CV14-02962-JAK
	CV14-00491-JAK
AMERICAN HONDA MOTOR CO., INC., ET AL.,	CV14-03109-JAK
DEFENDANT.	
- AND RELATED CASES -	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

MONDAY, MARCH 7, 2016, 10:00 AM

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APPEARANCES OF COUNSEL:

(AS STATED ON THE RECORD)

LOS ANGELES, CALIFORNIA; MONDAY, MARCH 7, 2016

10:00 AM

- - - - -

THE COURT: PLEASE STATE YOUR APPEARANCES IN THE SIGNAL IP CASE.

MR. HATCH: GOOD MORNING, YOUR HONOR. RYAN HATCH FOR SIGNAL.

MR. FENSTER: GOOD MORNING, YOUR HONOR. MARC FENSTER WITH RUSS, AUGUST AND KABAT ON BEHALF OF SIGNAL IP.

MR. WANG: GOOD MORNING, YOUR HONOR. BEN WANG ON BEHALF OF RUSS, AUGUST AND KABAT ON BEHALF OF THE PLAINTIFF.

THE COURT: GOOD MORNING.

AND FOR DEFENDANTS?

MR. DAVIS: GOOD MORNING, YOUR HONOR. AHMED DAVIS FROM FISH AND RICHARDSON FOR THE HONDA DEFENDANTS.

MY PARTNER RALPH PHILLIPS IS HERE AS WELL.

MR. LAVELLE: GOOD MORNING, YOUR HONOR. JOE LAVELLE FROM DLA PIPER FOR THE BMW DEFENDANTS.

AND MY COLLEAGUE BRIAN BIGGS IS WITH ME

AS WELL TODAY.

THE COURT: GOOD MORNING.

MR. PABIS: GOOD MORNING, YOUR HONOR. RON PABIS FROM GREENBERG TRAURIG ON BEHALF OF KIA MOTORS AMERICA.

AND WITH ME IS MY COLLEAGUE STEVE SHAHIDA.

THE COURT: GOOD MORNING. WELCOME.

MR. SATCHWELL: GOOD MORNING AGAIN, YOUR HONOR. MAT SATCHWELL FROM DLA PIPER FOR MAZDA.

AND WITH ME IS MY COLLEAGUE STEVE REYNOLDS.

THE COURT: GOOD MORNING, MR. SATCHWELL AND MR. REYNOLDS.

MR. DOYLE: GOOD MORNING, YOUR HONOR. SCOTT DOYLE FROM FRIED FRANK ON BEHALF OF MERCEDES-BENZ USA.

AND WITH ME TODAY ARE MY COLLEAGUES JOHN DE FOSSE AND TED NISSLY.

THE COURT: GOOD MORNING.

MR. DOYLE: GOOD MORNING, YOUR HONOR. PAT LUJIN OF SHOOK, HARDY AND BACON.

WITH ME IS MY COLLEAGUE RICH EISZNER.

THE COURT: GOOD MORNING, MR. LUJIN AND MR. EISZNER.

MS. KEIFER HAS GIVEN TO YOU MY TENTATIVE

STATEMENTS AS TO THE NUMEROUS MOTIONS THAT HAVE BEEN PRESENTED. I WANT TO EMPHASIZE THESE ARE TENTATIVE VIEWS. THESE ARE NOT FINAL VIEWS. THAT'S WHY YOU'RE HERE.

AS YOU ALSO KNOW FROM OUR PRIOR -- THE PRIOR TIMES WHEN YOU WERE HERE AND I GAVE YOU SIMILAR DOCUMENTS, ALL OF THESE ARE TO BE RETURNED BEFORE YOU LEAVE THE COURTROOM. DON'T MAKE COPIES. DON'T TAKE PICTURES AND SO ON.

THE PURPOSE OF PROVIDING THESE TO YOU IS SO YOU CAN REVIEW THEM AND FOCUS YOUR PRESENTATIONS TO ME AS TO WHERE I HAVE IT RIGHT OR WRONG. MAINLY, WHERE YOU DISAGREE WITH ME. BUT THAT'S WHAT I HAVE IN MIND.

WE HAVE DONE OUR BEST RECOGNIZING THAT THERE'S SOME CONFIDENTIAL INFORMATION THAT HAS BEEN PROVIDED IN CONNECTION WITH CERTAIN OF THE MOTIONS. WE'VE DONE OUR BEST IN PROVIDING YOU WITH THE TENTATIVES TO BREAK THEM UP SO AS TO NOT DISCLOSE TO ONE PARTY THE -- ANY CONFIDENTIAL INFORMATION OFFERED BY ONE DEFENDANT CONFIDENTIAL INFORMATION OF ANOTHER. AND I THINK WE'VE REASONABLY ACCOMPLISHED THAT. BUT IF INASMUCH AS WE HAVE NOT, YOU'LL BE RETURNING THIS AND NO PHOTOGRAPHS AND SO ON, I DON'T -- LET ME SAY IT THIS WAY:

IF ANY DEFENDANT RECEIVING A TENTATIVE AS

TO THAT PARTY BELIEVES THAT THERE'S INFORMATION IN THERE THAT IS CONFIDENTIAL TO ANOTHER DEFENDANT, THEN LET MS. KEIFER KNOW AFTER YOU HAVE REVIEWED THIS. AND WE'LL ADDRESS THIS. BUT, AGAIN, I THOUGHT THIS WAS THE MOST EFFICIENT WAY TO PROCEED.

IS THERE ANY CONCERN THAT ANY DEFENDANT HAS THAT I HAVE POTENTIALLY INCLUDED SOME INFORMATION THAT ANOTHER ONE OF YOUR COUNSEL FOR ANOTHER DEFENDANT MIGHT SEE?

IS THERE ANY PARTY REPRESENTATIVE PRESENT TODAY AS OPPOSED TO LAWYERS?

MR. DAVIS: YOUR HONOR, ON BEHALF OF HONDA, MY CLIENT, MR. DONALD STEVENS IS HERE.

THE COURT: I WOULD SAY UNTIL EVERYBODY HAS REVIEWED ALL OF THESE AND WE START THE HEARING, WHY DON'T YOU FORBEAR FROM DISCLOSING TO YOUR CLIENT ANY INFORMATION THAT YOU THINK MIGHT BE CONFIDENTIAL TO ANOTHER DEFENDANT. JUST TO LEAVE IT WITH YOU. I DON'T THINK THERE WILL BE ANY. BUT IF THERE IS, WILL YOU DO THAT, PLEASE?

MR. DAVIS: I WILL, YOUR HONOR.

MR. FENSTER: YOUR HONOR, WE HAVE A CLIENT REPRESENTATIVE FROM SIGNAL AS WELL.

THE COURT: GOOD MORNING. WELCOME.

I WANT YOU TO HAVE AN OPPORTUNITY TO

REVIEW THESE THINGS. WHAT'S THE MOST -- DOES IT MAKE SENSE TO START AT 10:30?

DOES THAT GIVE YOU ENOUGH TIME?

MR. DAVIS: I THINK AT LEAST ON BEHALF OF HONDA, 25 MINUTES SHOULD BE SUFFICIENT, YOUR HONOR.

THE COURT: WHAT DO YOU THINK?

MR. HATCH: YES, YOUR HONOR. THAT SHOULD BE SUFFICIENT.

THE COURT: DO YOU THINK YOU NEED LESS THAN THAT?

MR. DOYLE: NOT LESS.

THE COURT: WE'LL PLAN TO HAVE YOU REVIEW THESE AND RECONVENE AT 10:30.

IF, PRIOR TO 10:30, YOU THINK YOU NEED LESS TIME AND YOU ARE READY TO GO, LET US KNOW.

IF YOU THINK YOU NEED MORE TIME, LET MS. KEIFER KNOW.

AND DEPENDING ON THE ORDER IN WHICH YOU WANT TO PROCEED, WE MAY BE ABLE TO START WITH SOME AND NOT OTHERS.

OKAY. THANK YOU.

(RECESS)

THE COURT: OKAY. GOOD MORNING AGAIN.

HAVE YOU HAD SUFFICIENT TIME TO REVIEW THE MATERIALS AND ARE READY TO PROCEED?

I DON'T SEE ANYONE SAYING, "NO."

MR. HATCH, LET ME START WITH YOU.

HAVE YOU DISCUSSED THE -- WHAT YOU THINK WOULD BE THE MOST EFFICIENT ORDER IN WHICH TO ADDRESS THE MANY ISSUES?

MR. HATCH: WITH RESPECT TO WHAT WE WOULD LIKE TO ADDRESS, WE WOULD LIKE TO ADDRESS THE '927 PATENT, AND ALSO SOME OF THE OTHER ISSUES. BUT, MOST IMPORTANTLY, THE '927 SINCE THE COURT HAS, IT LOOKS LIKE, GRANTED -- OR IN THE TENTATIVE GRANTED THE MOTIONS ON THAT.

THE COURT: THAT'S FINE.

DOES ANYONE ELSE HAVE A DIFFERENT VIEW?

OKAY. YOU HAVE PRESENTED A VAST AMOUNT OF INFORMATION. I MEAN, I HAVE HUGE -- AND I HAVE CERTAINLY DONE MY BEST, BUT I DON'T PRETEND TO HAVE -- I'M NOT GOING TO SIT HERE AND SAY I UNDERSTAND ALL OF THIS AS WELL AS EACH OF YOU DOES. SO WHAT I'D LIKE YOU TO DO, WHERE YOU -- WHETHER YOU -- WHERE YOU DISAGREE WITH WHAT I'VE SAID, IS TO EXPLAIN -- GIVE ME YOUR TALKING POINTS SO THAT I CAN REFLECT ON THAT IN LIGHT OF THE MATERIALS THAT I'VE BEEN STUDYING.

SO LET'S -- NOW, IN TERMS OF THE ISSUE OF CONFIDENTIALITY, DID ANYONE SPOT A POTENTIAL PROBLEM WHERE I'VE -- IN ANY OF THE TENTATIVES WHERE YOU THINK

THE INFORMATION I'VE PROVIDED AS TO ONE DEFENDANT MIGHT BE SOMETHING THAT SHOULDN'T BE SEEN BY ANOTHER?

AND NO HANDS ON THAT.

IN TERMS OF PROCEEDING TODAY, DOES ANY DEFENDANT ANTICIPATE A PROBLEM WITH MAKING ARGUMENTS WHERE IT WOULD BE DISCLOSING CONFIDENTIAL INFORMATION UNIQUE TO THAT DEFENDANT TO OTHER DEFENDANT'S COUNSEL OR PARTY REPRESENTATIVES WHO ARE HERE?

OKAY. I DON'T SEE ANY HANDS ON THAT.

IF THAT CHANGES, THEN LET ME KNOW IN THE COURSE OF YOUR DISCUSSION.

DO YOU ANTICIPATE THAT ISSUE, MR. HATCH?

MR. HATCH: NOT ON OUR END.

THE COURT: ALL RIGHT. LET ME KNOW BECAUSE -- TO STAND UP -- AND EVEN IF I'M IN THE MIDDLE OF A DISCUSSION WITH SOMEONE ELSE, IF SOMEBODY THINKS HE OR SHE HEARS SOMETHING THAT'S UNIQUE TO HIS OR HER CLIENT THAT SHOULDN'T BE DISCUSSED IN FRONT OF OTHERS, LET ME KNOW.

OKAY. SO I THINK THE -- I THINK PROBABLY THE BEST THING IS TO HAVE MR. HATCH ADDRESS THE '927. AND THEN I'LL HEAR FROM THE DEFENSE COUNSEL WHO WISH TO PRESENT ON THE '927.

DOES ANYBODY THINK THAT THERE'S A MORE EFFICIENT WAY TO GO?

NO HANDS.

OKAY. MR. HATCH?

MR. HATCH: FIRST OF ALL, WE WANT TO THANK THE COURT FOR THE TENTATIVE. IT'S THOUGHTFUL AND ADDRESSES A LOT OF THE ISSUES THAT WERE RAISED, SO --

THE COURT: THANK YOU. THAT'S NICE, BUT IT'S OKAY. I'M JUST DOING WHAT YOU DO, WHICH IS YOUR JOB. AND YOU DON'T HAVE TO AGREE WITH WHAT I'VE SAID. THAT'S WHY YOU'RE HERE. I WANT TO HEAR FROM ALL OF YOU AND SEE WHERE I HAVE IT RIGHT OR HAVE IT WRONG.

MR. HATCH: SO I THINK WHERE THE COURT HAS IT WRONG ON THE '927 IS ON A COUPLE ISSUES THAT I THINK ARE A COMMON THREAD THROUGH ALL OF THE DEFENDANTS HERE, WHICH IS, NUMBER ONE, THIS NOTION THAT WE HAVE NOT SHOWN USE OF RELATIVE SPEED IN THE SYSTEMS.

AND, NUMBER TWO, THAT THERE'S SOME POSSIBILITY THAT THE SUSTAIN TIME IS FIXED RATHER THAN VARIABLE.

I THINK IF YOU LOOK AT THE EVIDENCE THAT WE HAVE PRESENTED, THAT IT'S IMPOSSIBLE FOR THE RELATIVE SPEED NOT TO BE TAKEN INTO ACCOUNT. AND IT'S ALSO IMPOSSIBLE FOR THAT SUSTAIN TIME TO BE FIXED. I'LL EXPLAIN WHY.

ONE THING THAT I WOULD AGREE IN LARGE PART WITH IN THE TENTATIVE IS THIS IDEA THAT THE

RADAR'S ZONE IS SMALLER THAN THE BLIND-SPOT ZONE. AND THIS IS VERY IMPORTANT. WE SPENT A LOT OF TIME IN THE CASE DEVELOPING THE FACTS TO SHOW THAT THESE RADARS, WHERE THEY'RE PLACED ON THE REAR -- TYPICALLY ON THE REAR-CORNER BUMPERS OF A VEHICLE, THE WAY THE ANGLE IS -- THE WAY THE RADARS ARE ANGLED AND THE WAY THE FIELD OF VIEW IS LIMITED MEANS NECESSARILY THAT THE RADAR'S ZONE IS SMALLER THAN THE BLIND-SPOT ZONE. I DON'T THINK THE COURT LOOKS AT THAT AS A NON-INFRINGEMENT ARGUMENT AT ALL. I THINK WE'RE IN AGREEMENT THAT THERE IS THAT ISSUE FUNDAMENTALLY.

AND THAT'S REALLY IMPORTANT BECAUSE IF THE RADAR'S DETECTION AREA IS SMALLER THAN THE BLIND-SPOT AREA AND -- AS IS, I THINK, UNDISPUTED -- AND THAT THE ALERT IS ON, AS LONG AS THE VEHICLE IS IN THAT LARGER BLIND-SPOT AREA, THEN IT NECESSARILY FOLLOWS THAT THE ALERT IS VARIABLE AND THAT THEY'RE USING RELATIVE SPEED.

THE REASON THAT IT'S VARIABLE RATHER THAN FIXED IS BECAUSE, IN THE REAL WORLD AS YOU'RE DRIVING A VEHICLE, THERE'S A HOST AND A TARGET VEHICLE. THE SYSTEM CAN'T CONTROL HOW FAST THE VEHICLES OPERATE. THEY CAN'T CONTROL THE DRIVING. THEY HAVE TO TAKE INTO ACCOUNT REAL-WORLD-DRIVING SCENARIOS. AND ONE OF THE SCENARIOS IS THAT A VEHICLE AT SOME RELATIVE SPEED, THE

TWO VEHICLES ARE PASSING, THE VEHICLE COULD CHANGE SPEED.

FOR EXAMPLE, IF YOU'RE DRIVING IN THE HOST VEHICLE, YOU HAVE A BLIND-SPOT SYSTEM IN YOUR VEHICLE, AND YOU HAVE A CAR COMING UP FROM BEHIND AT SOME SPEED. THERE'S GOING TO BE A FIXED RELATIVE SPEED AS LONG AS THE HOST AND TARGET VEHICLES ARE TRAVELING AT A CONSTANT SPEED.

BUT WHAT IF ONE OF YOU BRAKES OR SLOWS DOWN OR SPEEDS UP? THEN THAT'S GOING TO HAVE TO BE TAKEN INTO ACCOUNT BY THESE SYSTEMS. AND AS LONG AS THAT ALERT STAYS ON WHEN A VEHICLE IS IN THAT BLIND-SPOT ZONE, IT'S GOING TO HAVE TO TAKE INTO ACCOUNT THAT BRAKING, THE ACCELERATION, THE MOVING OF THE VEHICLE TO KNOW HOW LONG THE ALERT IS GOING TO BE SUSTAINED. SO IT CANNOT BE FIXED.

IF IT WAS FIXED, WHAT WOULD HAPPEN IS -- LET'S SAY IT'S FIXED AT ONE SECOND AFTER THE VEHICLE GOES OUT OF THE RADAR ZONE. WHAT HAPPENS IF THE TARGET VEHICLE THEN SLOWS DOWN AND STAYS IN THE BLIND-SPOT ZONE FOR LONGER THAN ONE SECOND? WELL, YOU HAVE AN ALERT THAT'S NOW TURNED OFF INCORRECTLY BECAUSE THE TARGET VEHICLE IS STILL THERE. THE DRIVER OF THE HOST VEHICLE NOTICES THAT THE ALERT IS TURNED OFF. AND NOW THEY'RE THINKING THAT THE TARGET VEHICLE IS NO LONGER

IN THE BLIND-SPOT ZONE. THAT'S EXTREMELY DANGEROUS. THAT COULD LEAD TO THE DRIVER OF THE HOST VEHICLE MAKING A TURNING MANEUVER, FOR EXAMPLE, INTO THAT LANE AND HITTING THE OTHER CAR AT A HIGH RATE OF SPEED CAUSING AN ACCIDENT.

SO THESE ARE SAFETY FEATURES. THEY WOULD NEVER USE A FIXED TIME, AND THEY DON'T USE A FIXED TIME BECAUSE THEY HAVE TO TAKE INTO ACCOUNT THE RELATIVE SPEEDS OF THE TWO VEHICLES AND SUSTAIN THE ALERT AS LONG AS A VEHICLE IS IN THAT BLIND-SPOT ZONE. THAT HAS TO HAPPEN. AND I THINK WE'VE SHOWN THROUGHOUT THE EVIDENCE AND ARGUMENT THAT IT DOES, IF YOU TAKE -- IF YOU TAKE, AS ACCEPTED, THE FACT THAT THE ALERT STAYS ON AS LONG AS THE VEHICLE IS IN THE ZONE AND THAT THE RADAR IS SMALLER THAN THE ZONE. I DON'T THINK THERE'S ANY QUESTION ON THOSE LAST TWO POINTS.

THE COURT: OKAY. ALL RIGHT. THANK YOU, MR. HATCH.

DO YOU WANT TO STOP THERE?

MR. HATCH: SURE.

THE COURT: WHO WOULD LIKE TO ADDRESS THIS?

MR. DAVIS: GOOD MORNING AGAIN, YOUR HONOR. AHMED DAVIS ON BEHALF OF HONDA.

THE COURT: THANK YOU FOR RESTATING YOUR NAME THAT WAY.

MR. DAVIS: JUST BRIEFLY, YOUR HONOR. OBVIOUSLY, I'M GOING TO ADDRESS THIS IN THE HONDA SPECIFIC CONTEXT, BUT I THINK IT MAY APPLY IN OTHERS.

AT LEAST AS IT RELATES TO HONDA, THERE REALLY HAS NOT EVER BEEN A DISPUTE THAT THE SYSTEM MEASURES RELATIVE VEHICLE SPEED. OUR SYSTEMS DO THAT. AND I DON'T THINK THAT THAT HAS BEEN SOMETHING THAT WE'VE CHALLENGED.

THE CHALLENGE THAT WE'VE HAD IS WHAT WE BELIEVE IS A FUNDAMENTAL MISPERCEPTION BY THE PLAINTIFF OF THE COURT'S CONSTRUCTION OF VARIABLE SUSTAIN TIME AND WHAT THAT IS IN THE CONTEXT OF THE PATENT.

AT LEAST AS IT WAS BRIEFED AND ARGUED IN THE BRIEFS AS TO HONDA AND IN THE EXPERT REPORTS THAT SIGNAL FILED WITH RESPECT TO HONDA, THE ARGUMENT WAS THAT THE HONDA SYSTEMS USE A VARIABLE SUSTAIN TIME NECESSARILY BECAUSE, IF THE TARGET VEHICLE IS TRAVELING MORE QUICKLY THAN THE HONDA VEHICLE, THAN IT WILL BE IN THE BLIND-SPOT ZONE FOR A SMALLER PERIOD OF TIME. BUT IF THE VEHICLE IS TRAVELING AT A SLOWER RATE OF SPEED, THEN IT WILL BE IN THAT SAME BLIND SPOT ZONE FOR A LONGER PERIOD OF TIME. AND THAT'S, IN OUR VIEW, NOT QUITE WHAT THE VARIABLE SUSTAIN TIME REALLY IS MEANT.

AND I THINK AT LEAST -- I'M REFERRING NOW TO THE COURT'S MARKMAN ORDER AT PAGE 16. AND THE COURT

EXCERPTED, FROM THE '927 PATENT, FIGURE 5. AND IT WROTE IN RED ON THE SIDES OF THAT FIGURE IN THE FLOW, THE VARIABLE SUSTAIN TIME AND THE THRESHOLD TIME. AND IT POINTED OUT THAT THE VARIABLE SUSTAIN TIME IS USED TO DELAY THE TIME AN ALERT SIGNAL IS SOUNDED WHERE THE ALERT HAS BEEN SOUNDING FOR LONGER THAN A CERTAIN THRESHOLD TIME.

SO IN ORDER TO MAKE OUT ITS CLAIM FOR INFRINGEMENT AGAINST HONDA -- AGAINST EVERYONE, BUT SPECIFICALLY AS IT RELATES TO HONDA, AT THE VERY LEAST, WHAT THEY WERE REQUIRED TO DO WAS TO IDENTIFY A THRESHOLD TIME IN THE FIRST INSTANCE. THEY HAVE TO DO THAT. AND THERE'S NO EVIDENCE THAT THAT HAS BEEN DONE IN THIS CASE AGAINST HONDA.

EVEN BEYOND THAT, THEY HAVE TO THEN DETERMINE THAT A VARIABLE SUSTAIN TIME HAS BEEN SELECTED. NOT THAT IT'S SOMETHING THAT HAPPENS AS A MATTER OF PHYSICS BECAUSE THE CARS ARE PASSING EACH OTHER, BUT IT ACTUALLY HAS TO BE SELECTED, AND THAT IT HAS TO VARY AS A FUNCTION OF THE VEHICLE'S RELATIVE SPEED.

AND SO IN OUR INSTANCE, TO -- WE DON'T BELIEVE THAT THE EVIDENCE SHOWS THAT THEY HAVE SELECTED A THRESHOLD -- THAT THEY HAVE IDENTIFIED A THRESHOLD TIME AT ALL.

BUT EVEN TO THE EXTENT THAT THEY HAVE, THEY CERTAINLY HAVE NOT TAKEN THE NEXT STEP AS REQUIRED BY THE CLAIMS AND IDENTIFIED A VARIABLE SUSTAIN TIME THAT CHANGES AS A FUNCTION OF VEHICLE SPEED.

I HEARD MR. HATCH SAY THAT IT IS IMPOSSIBLE FOR THE SUSTAIN TIME TO BE FIXED. AND I JUST -- I DON'T -- I DON'T KNOW WHAT THE EVIDENTIARY BASIS IS FOR HIM TO SAY THAT. THERE IS -- THAT'S PURE ATTORNEY ARGUMENT. THERE IS NOTHING IN THE RECORD THAT THEY HAVE ADDUCED. THERE'S NOTHING IN HONDA DOCUMENTS. THERE IS NOTHING AT ALL TO SUGGEST THAT THAT STATEMENT IS TRUE.

SO AT LEAST AS TO THE THRESHOLD TIME AND THE VARIABLE SUSTAIN TIME, THERE SIMPLY IS NO EVIDENCE HERE, YOUR HONOR. ON THAT POINT ALONE, WE BELIEVE THAT THE TENTATIVE IS CORRECT.

THE COURT: JUST A MINUTE. DON'T -- STAND BY, MR. DAVIS.

MR. HATCH, IN WHAT MR. DAVIS JUST SAID, I WANT TO MAKE SURE I UNDERSTOOD WHAT YOU SAID. I INTERPRETED WHAT YOU SAID TO SAY THAT THERE ARE TWO VEHICLES, A HOST VEHICLE AND THE TARGET VEHICLE, AND THAT THEIR RELATIVE SPEEDS MAY VARY DURING THEIR INTERACTION?

MR. HATCH: CORRECT.

THE COURT: AND FROM THAT, YOU ARGUED THAT THERE NECESSARILY WOULD HAVE TO BE A VARIABLE TIME COMPONENT?

MR. HATCH: THAT'S NOT ALL OF THE EVIDENCE, BUT THAT WAS THE ARGUMENT THAT I WAS MAKING.

THE COURT: OKAY. LET ME MAKE SURE, MR. DAVIS, THAT I HAVE CLEAR. I UNDERSTAND THAT THERE'S A DIFFERENCE BETWEEN WHAT PHYSICS AND LOGIC AND SCIENCE IS AND WHAT THE PATENT MAY SAY. BUT WHAT'S YOUR RESPONSE TO THAT AGAIN, PLEASE?

MR. DAVIS: THE RESPONSE TO THAT, YOUR HONOR, IS THAT THE -- AS I UNDERSTAND WHAT MR. HATCH IS SAYING IS, THERE CAN NEVER BE A FIXED SUSTAIN TIME BECAUSE THE VEHICLE SPEEDS ARE CHANGING. THAT'S -- OF COURSE, EXACTLY.

WHAT THE CLAIMS REQUIRE IS THAT, AFTER THE VEHICLE HAS BEEN IN THE BLIND SPOT FOR A THRESHOLD PERIOD OF TIME, THAT THERE IS AN ADDITIONAL PERIOD OF TIME THAT THE ALERT WOULD BE SUSTAINED. AND THAT PERIOD OF TIME VARIES AS A FUNCTION OF THE RELATIVE VEHICLE SPEED.

AND IN THIS INSTANCE, THERE IS NO EVIDENCE THAT THE HONDA SYSTEMS OPERATE IN THAT WAY. IN FACT, THERE'S EVIDENCE DIRECTLY TO THE CONTRARY. WE HAVE CITED THAT IN OUR BRIEFS. I WON'T GO THROUGH IT

HERE.

THE COURT: THANK YOU, MR. DAVIS.

MR. PABIS: THANK YOU, YOUR HONOR. RON PABIS ON BEHALF OF KIA.

I'M A LITTLE SURPRISED WE'RE HERE ON THE '927 BECAUSE, AS YOU KNOW, AS WE PUT IN OUR BRIEFS, SIGNAL OFFERED TO DROP THAT A FEW MONTHS AGO AGAINST KIA.

BUT THE CLAIMS HERE REQUIRE -- AND I DON'T -- I'LL ECHO A LITTLE BIT OF WHAT MR. DAVIS SAID. THE CLAIMS HERE REQUIRE SELECTING A VARIABLE SUSTAIN TIME AND COMPARING THAT SUSTAIN TIME TO A THRESHOLD TO DETERMINE WHETHER YOU'RE GOING TO USE THAT VARIABLE SUSTAIN TIME.

THE KIA SYSTEMS DON'T USE TIME AT ALL. THEY DON'T SELECT A VARIABLE SUSTAIN TIME OR A THRESHOLD TIME.

WE HAVE A FIXED DISTANCE FOR THE BLIND-SPOT ZONE. WE HAVE A FIXED AREA BEHIND THE BLIND-SPOT ZONE. THAT IS, THE REAR ZONE.

AND I HAVE DEMONSTRATIVES, IF YOUR HONOR WOULD LIKE TO SEE THEM, WHICH MIGHT HELP EXPLAIN THAT.

THE COURT: GO AHEAD.

DO YOU HAVE THESE AS WELL?

MR. HATCH, DO YOU HAVE A COPY?

MR. HATCH: I JUST GOT ONE.

THE COURT: OKAY. GO AHEAD.

DO YOU HAVE ANOTHER COPY OF WHICH YOU CAN LODGE WITH THE COURT AFTERWARDS?

JUST ANYONE WHO HAS A DEMONSTRATIVE THAT WILL BE USED TODAY, PLEASE MAKE SURE YOU LODGE IT WITH THE CLERK AT THE END OF THE HEARING. THANK YOU.

CORRECTION. AFTER THE HEARING, LODGE THEM ON THE ELECTRONIC FILE.

MR. PABIS: SO, YOUR HONOR, AS YOU SEE -- THIS IS EXHIBIT 7 TO OUR SUMMARY JUDGMENT MOTION.

THIS IS THE BLIND SPOT ZONE IN THE ACCUSED KIA VEHICLES.

THE YELLOW REPRESENTS THE BLIND SPOT ZONE.

THE RED REPRESENTS THE REAR ZONE.

AND IN BETWEEN THE REAR ZONE AND THE BLIND-SPOT ZONE, THERE IS A HYSTERESIS ZONE.

SO ONCE THE CAR ENTERS THE BLIND-SPOT ZONE, IF IT'S APPROACHING FROM THE REAR, THE WARNING WILL BE GIVEN TO THE DRIVER. THAT WARNING WILL STAY ON UNTIL -- UNLESS AND UNTIL THE CAR FALLS BACK BEHIND THE HYSTERESIS ZONE.

THIS CONCEPT THAT HYSTERESIS IS LIKE YOUR THERMOSTAT OBVIOUSLY --

THE COURT: THAT'S BEEN -- IT RECEIVED A LOT OF ATTENTION IN THE DISCUSSIONS AND IN THE BRIEFS.

MR. PABIS: BUT THE POINT IS, YOUR HONOR, WE HAVE A FIXED BLIND-SPOT ZONE, A FIXED HYSTERESIS ZONE, WHICH IS ABOUT A METER IN ALL THE VEHICLE, AND THEN A FIXED REAR ZONE. SO THERE'S NO TIME ELEMENT AT ALL OTHER THAN, AS MR. DAVIS SAID, AS A RESULT OF PHYSICS AND THE CAR BEING IN THE ZONE FOR A PARTICULAR TIME. BUT THERE'S NO SELECTING OF VARIABLE SUSTAIN TIME AND NO COMPARING THAT TO A THRESHOLD.

THE OTHER ISSUE IS, WITH REGARD TO THIS -- THE LAST ELEMENT OF THE CLAIM, THE LAST ELEMENT REQUIRES WHEN THE ZONE OF COVERAGE APPEARS TO INCREASE UNDER YOUR HONOR'S CLAIM CONSTRUCTION. AND THAT REQUIRES THAT THERE IS -- I HAVE THAT HERE TOO.

YOUR CLAIM CONSTRUCTION ORDER IS ON PAGE 18, "WHEREIN THE ALERT SIGNAL REMAINS ACTIVE WHEN A TARGET VEHICLE IS BEYOND THE RANGE THAT THE OBJECT DETECTION SYSTEM CAN DETECT."

IN OTHER WORDS, IF YOU USE THE VARIABLE SUSTAIN TIME, THAT MAKES THE ZONE LOOK BIGGER -- THE BLIND-SPOT ZONE LOOK BIGGER THAN IT ACTUALLY IS.

HERE, IN THE ACCUSED KIA VEHICLES, WHEN IT FALLS BEHIND THE BLIND-SPOT ZONE AND INTO THE HYSTERESIS ZONE, IT'S STILL BEING MONITORED BY THE

RADAR. SO THE LAST ELEMENT OF THAT CLAIM CANNOT BE MET.

AND DR. SMEDLEY ADMITTED THAT AT HIS DEPOSITION. AND THAT IS ON PAGE 19 OF THE SLIDE DECK.

WITH THAT, YOUR HONOR, I WILL PASS TO ANOTHER DEFENDANT.

THE COURT: THANK YOU.

MR. SATCHWELL: THANK YOU, JUDGE. MAT SATCHWELL FOR MAZDA.

I THINK WE CAN ECHO SOME, AT LEAST, OF WHAT MR. GREEN (SIC) AND KIA'S COUNSEL MENTIONED ALREADY. I THINK THERE'S A FEW SPECIFIC ISSUES AS TO MAZDA THAT I WANT TO DRAW YOUR ATTENTION TO.

THE COURT: OKAY.

MR. SATCHWELL: THE FIRST IS THAT, THE MAZDA SYSTEM, I THINK LIKE THE KIA SYSTEMS WE JUST HEARD, HAS NOTHING TO DO WITH TIME. IT IS BASED ENTIRELY -- THE DECISION ON WHETHER TO TRIGGER AN ALARM AND HOW LONG THAT ALARM STAYS ON IS BASED ENTIRELY ON POSITION OF THE TARGET VEHICLE.

THE REASON THAT'S IMPORTANT IS, THAT THESE ARE -- THIS IS A METHOD CLAIM, JUDGE, AS YOU KNOW. THERE ARE SPECIFIC STEPS THAT MUST BE PERFORMED HERE. AND WHAT I DIDN'T HEAR IN MR. HATCH'S COMMENTS AND WHAT I HAVE SEEN NOWHERE IN THE EVIDENCE IS ANY

INDICATION THAT THERE'S ANY SELECTION OF A SUSTAIN TIME IN THE MAZDA VEHICLE OR ANY DETERMINATION OF WHETHER THE ALARM HAS BEEN ON BEYOND THE THRESHOLD TIME.

SO EVEN FOR SUMMARY JUDGMENT PURPOSES, IF WE TAKE SIGNAL'S POSITION TO BE CORRECT, THAT THERE IS SOME ESTIMATION OF TIME, WHICH THERE IS NO EVIDENCE ON THAT, WE STILL DON'T GET TO THE NECESSARY CLAIM ELEMENTS OF SELECTING A SUSTAIN TIME OR DETERMINING WHETHER THE SIGNAL HAS BEEN ON FOR THE THRESHOLD TIME.

AND IN CASE IT'S HELPFUL, WE'VE JUST HANDED YOU A DECK OF DEMONSTRATIVES. I'M NOW ON SLIDE 27. THIS SHOWS SCHEMATICALLY HOW THE MAZDA SYSTEM WORKS. AND IT'S VERY SIMILAR TO WHAT YOU HAVE JUST SEEN WITH KIA AND SOME OF THE OTHER DEFENDANTS, JUDGE.

THERE IS A WARNING ZONE THAT WE'VE HIGHLIGHTED IN YELLOW IN BOTH OF THESE DIAGRAMS. AND THEN AROUND THAT WARNING ZONE IN ALL DIRECTIONS, THERE'S A HYSTERESIS ZONE. I WON'T BELABOR THIS BECAUSE IN THE 30 MINUTES WE HAD TO REVIEW YOUR TENTATIVE, I THINK THE TECHNOLOGY RECITATION IN THE TENTATIVE IS EXACTLY WHAT I WOULD EXPLAIN TO THE COURT. SO I'LL JUMP PAST THAT.

AS I MENTIONED, WHAT'S REALLY KEY TO ME IS THAT THE WORD "SELECTED," STARTING WITH THAT LIMITATION, HAS TO MEAN SOMETHING.

WE'RE NOW ON SLIDE 29.

WE CAN'T SIMPLY READ THAT LIMITATION OUT OF THE CLAIMS AS INCONVENIENT TO SIGNAL.

AND SO IN THE MAZDA SYSTEM, IT DETERMINES WHETHER TO ACTIVATE THE WARNING. LET ME BACK UP.

IT DOESN'T DETERMINE "WHETHER TO." IT SIMPLY ACTIVATES THE WARNING WHEN THE TARGET VEHICLE ENTERS THE WARNING ZONE.

THAT ALARM STAYS ON UNTIL THE TARGET VEHICLE EXITS THE HYSTERESIS ZONE, EITHER THE FRONT OR THE BACK OF THE ZONE. THAT'S WHY IT GOES AROUND ALL FOUR SIDES.

THERE'S NO DETERMINATION OF HOW LONG TO SUSTAIN THAT SIGNAL FOR, AND THERE CANNOT BE. THE MAZDA VEHICLE CAN'T CONTROL HOW LONG THAT TARGET VEHICLE STAYS IN THE ZONE. SO IF THE SIGNAL PERSISTS FOR HOWEVER LONG IT'S THERE, THERE CAN BE NO SELECTION.

IT DOESN'T MAKE SENSE TO PASSIVELY MEASURE HOW LONG A VEHICLE STAYS IN A CERTAIN POSITION, AND THEN CALL THAT A SELECTION, AN ACTIVE SELECTION THAT'S BEEN MADE BY THE MAZDA VEHICLE.

AND DR. SMEDLEY, AT HIS DEPOSITION, AGREED WITH ME. HE DID EXPLAIN THAT, AS I'VE HIGHLIGHTED HERE, THE SUSTAIN -- THE VARIABLE SUSTAIN TIME THAT SIGNAL POINTS TO IN THE MAZDA VEHICLE IS

SIMPLY THE AMOUNT OF TIME THE TARGET VEHICLE IS IN THE ZONE. THERE CAN BE NO SELECTION OF THAT.

BECAUSE THE MAZDA SYSTEM CAN'T CONTROL, IT DOESN'T MEET THE SELECTION LIMITATION. I THINK YOUR TENTATIVE IS EXACTLY RIGHT ON THAT.

WE HAVE A VERY SIMILAR ISSUE WITH THE PROBLEM WITH THE DETERMINATION ON THE THRESHOLD TIME. I'LL GO DIRECTLY TO DR. SMEDLEY'S TESTIMONY ON THAT.

THIS ONE IS ACTUALLY A LITTLE BIT EASIER. AGAIN, THERE'S NO EVIDENCE IN THE RECORD THAT COULD DEFEAT SUMMARY JUDGMENT.

I'M ON SLIDE 38 NOW, JUDGE.

THERE'S NO EVIDENCE IN THE RECORD THAT THERE'S ANY ACTIVE DETERMINATION, THAT THERE'S ANY DETERMINATION STEP BEING PERFORMED AS REQUIRED BY THIS METHOD CLAIM IN THE MAZDA VEHICLES.

AND, AGAIN, DR. SMEDLEY AGREES WITH US. HE ADMITTED THAT HE'S NEVER EVEN CONSIDERED IF ANY MAZDA VEHICLE PERFORMS THE STEP OF DETERMINING WHETHER THE ALERT WAS ON FOR A THRESHOLD TIME.

I ASK HIM AT THE BOTTOM THERE -- I PROVIDED THE ENTIRE PARAGRAPHS THERE FOR CONTEXT. BUT I SAY, "IS THERE EVER AN INSTANCE WHEN AN ALERT SIGNAL IS ACTIVATED, BUT WAS NOT ACTIVE FOR A THRESHOLD TIME?" AND HE SAYS HE'S NEVER EVEN ATTEMPTED TO DETERMINE

THAT. HE'S NEVER LOOKED AT THAT ISSUE.

NOT ONLY IS THERE NO RECORD EVIDENCE THAT WOULD INDICATE A TRIABLE ISSUE OF FACT ON THAT LIMITATION FOR MAZDA, BUT SIGNAL'S EXPERT CAN'T EVEN OPINE ON IT.

SO I JUST WANT -- I AGREE COMPLETELY WITH THE TENTATIVE. I THINK THE TECHNOLOGY RECITATION AS TO MAZDA IN THE TENTATIVE IS ACCURATE.

I JUST WANTED TO DRAW THE COURT'S ATTENTION TO THOSE TWO UNIQUE ISSUES THAT WE SIMPLY DON'T HAVE ANY EVIDENCE ON THAT COULD OVERCOME SUMMARY JUDGMENT.

THE COURT: THAT'S VERY HELPFUL. THANK YOU, MR. SATCHWELL.

MR. DOYLE: YOUR HONOR, IT'S SCOTT DOYLE FOR MERCEDES-BENZ USA. I'M GOING TO MAKE THIS VERY SHORT.

YOU POINTED OUT SOMETHING IN YOUR TENTATIVE. IT SAYS, "SIGNAL DOES NOT IDENTIFY ANY DOCUMENTS OR WITNESS TESTIMONY SHOWING THAT THE BSA SYSTEM SELECTS A VARIABLE SUSTAIN TIME AS A FUNCTION OF RELATIVE VEHICLE SPEED." THEY DON'T, NOWHERE. NO DOCUMENTS, NO EVIDENCE, NO EXPERT TESTIMONY, NOTHING TO THAT EFFECT.

I JUST WANT TO MAKE SURE THOUGH -- I THINK YOUR TECHNOLOGY UNDERSTANDING IS VERY GOOD. AND

YOU POINT OUT THAT THE RADAR SYSTEM IS VERY WIDE AT 140 DEGREES. THE ONE POINT THAT I'M NOT SURE YOU MADE OR NOT IS THAT THE ACTUAL SOURCE CODE WAS TURNED OVER HERE --

THE COURT: BY MERCEDES, BUT NOT OTHERS.

MR. DOYLE: BY MERCEDES.

WHAT'S REALLY INTERESTING IS, MEASURED VALUES FROM THE RADAR DETECTORS ACTUALLY DETERMINE WHEN TO TURN OFF THE WARNING. SO THERE'S NO EXTENSION. MEANING, IT'S NOT AS IF THE WARNING GOES BEYOND THE DETECTION ZONE. IT CAN'T BECAUSE IT'S USING THE VALUES THAT ARE DETECTED TO TURN OFF THE WARNING ZONE. THAT'S IN THE SOURCE CODE, UNREBUTTED.

BUT IF WE WANT TO TALK ABOUT ALL THE ELEMENTS, THERE WAS NO EVIDENCE IN THE RECORD THAT AN ALLEGED SUSTAIN TIME IS VARIABLE. IN FACT, THERE'S NOT EVEN AN EXAMPLE OF AN ALLEGED SUSTAIN TIME WHETHER IT'S VARIABLE OR FIXED. SURELY, NO EVIDENCE THAT THE ALLEGED SUSTAIN TIME IS SELECTED AS A FUNCTION OF RELATIVE VEHICLE SPEED. IN OUR RECORD, THERE'S NO IDENTIFICATION OF AN ALERT COMMAND. THEY NEVER IDENTIFIED IT. IT CAN'T BE ATTORNEY ARGUMENT. YOU CAN'T COME UP HERE AND MAKE UP A STORY AND SAY WHY THINGS HAVE TO BE NECESSARY. THERE ARE SEVERAL LIMITATIONS OF THIS CLAIM. NO IDENTIFICATION OF A

THRESHOLD TIME. NO EVIDENCE THAT YOU USED THE ALLEGED SUSTAIN TIME -- THAT THE USE OF IT DEPENDS UPON THE THRESHOLD TIME. SO THE FACT IS, THERE'S NOTHING HERE. THERE'S ONLY A STORY THAT'S BEEN MADE UP. THAT'S ALL I HAVE TO SAY.

THE COURT: THANK YOU, MR. DOYLE.

MR. LAVELLE: MAY IT PLEASE THE COURT, YOUR HONOR, JOE LAVELLE FOR BMW.

THE COURT: MR. LAVELLE, IF I ADHERE TO MY TENTATIVE VIEWS AS TO BMW, DO YOU PLAN TO PURSUE THE INVALIDITY CLAIMS?

MR. LAVELLE: IF WE'RE OUT OF THE CASE, I THINK WE'RE OUT OF THE CASE. AND WE WOULDN'T NEED TO FILE -- PURSUE OUR DECLARATORY JUDGMENTS.

THE COURT: GO AHEAD.

MR. LAVELLE: I JUST -- MOST OF WHAT YOU HAVE OBVIOUSLY LEARNED IS THAT THESE SYSTEMS WORK IN A VERY SIMILAR FASHION.

THE ONLY ADDITIONAL POINT I WANTED TO RAISE WITH RESPECT TO BMW IS, BMW GOT A SPECIFICATION FROM ITS VENDOR. AND I WON'T MENTION THE VENDOR'S NAME. BUT THERE WAS A SPECIFICATION THAT BOTH EXPERTS REVIEWED AND HAD TRANSLATED. AND NEITHER FILED A FIRST THRESHOLD IN THAT SPECIFICATION. NEITHER FOUND ANY EVIDENCE THAT THE BMW SYSTEM SELECTS A VARIABLE SUSTAIN

TIME AS A FUNCTION OF RELATIVE SPEED.

AND WITH RESPECT TO THE SUSTAIN TIME, IT IS CLEAR THAT THERE IS A FIXED SUSTAIN TIME. THE SYSTEM HAS TO SEE NO CAR PRESENT FOR THREE TIMES - IT'S A REPETITION CODE - BEFORE IT SHUTS OFF THE ALERT.

SO IN ADDITION TO THE FAILURES OF PROOF, AND WE HAVE THE SAME FAILURES OF PROOF AS EVERYBODY ELSE HAD, DR. SMEDLEY JUST NEVER SAW THE CODING HE NEEDED TO REVIEW.

IN ADDITION TO THAT, THERE IS AFFIRMATIVE EVIDENCE THAT TENDS TO CONTRADICT THE INFERENCE THE PLAINTIFF IS ASKING TO DRAW IN LEGAL ARGUMENT.

THANK YOU, YOUR HONOR.

THE COURT: OKAY. THANK YOU.

MR. LUJIN: YOUR HONOR, PAT LUJIN FOR NISSAN.

I WILL ALSO BE VERY BRIEF BECAUSE THERE ARE SOME VERY SIMILAR ISSUES.

NISSAN'S VEHICLES CERTAINLY OPERATE SLIGHTLY DIFFERENTLY THAN SOME OTHERS, BUT I THINK IT'S PRETTY WELL LAID NOT ONLY IN THE SUMMARY JUDGMENT BRIEFING, BUT ALSO IN OUR PENDING MOTION TO STRIKE SIGNAL'S NEW INFRINGEMENT THEORY.

THE ONE THING I WANTED TO POINT OUT IS THAT, IT'S NISSAN'S POSITION THAT WE DON'T SUSTAIN THE TIME AT ALL.

SIGNAL WORKS VERY HARD IN ITS OPPOSITION TO SHOW THERE IS SOME SUSTAINING OF THE ALERT GOING ON.

BUT EVEN IF YOU GIVE THEM THE BENEFIT OF THE DOUBT ON THAT, THERE'S NO PROOF, WHATSOEVER, THAT THERE'S ANY SELECTION OF A VARIABLE SUSTAIN TIME, NO DETERMINING OF A THRESHOLD TIME.

EVEN IF THE COURT THOUGHT THERE WAS AN ISSUE ABOUT WHETHER NISSAN SUSTAINS AN ALERT, THERE IS NOTHING IN THE OPPOSITION ABOUT ADDRESSING HOW THE ALERT IS ALLEGEDLY SUSTAINED.

THANK YOU.

THE COURT: THANK YOU, MR. LUJIN.

ANY OTHER DEFENSE COUNSEL THAT WOULD LIKE TO ADD ANYTHING AT THIS POINT?

OKAY. MR. HATCH?

MR. HATCH: SO, YOUR HONOR, I THINK IT'S EVIDENT, HEARING ALL THIS EVIDENCE, THAT NOBODY REALLY ADDRESSED THE QUESTION, WHICH IS, IF THE RADAR ZONE IS LIMITED, SMALLER THAN THE BLIND-SPOT ZONE, AND THE ALERT STAYS ON WHILE THE VEHICLE IS IN THAT ZONE, HOW IS IT NOT IMPOSSIBLE THAT THE ALERT IS VARIABLE RATHER THAN SUSTAINED AND THEY DON'T USE THE RELATIVE SPEED? NOBODY SEEMED TO ADDRESS THAT ISSUE. I DON'T THINK THEY CAN.

SO WHAT WE'RE GETTING INSTEAD IS, OTHER

ARGUMENTS, SOME OF THEM I THINK NEW, NOT THAT WE HAVEN'T EVEN SEEN BEFORE LIKE THIS IDEA ABOUT THE SELECTION NOT BEING MADE. BUT I WOULD LIKE TO ADDRESS SOME OF THESE ARGUMENTS JUST IN ORDER OF HOW THEY WERE PRESENTED.

SO HONDA MAKES AN ARGUMENT REFERENCING THE CLAIM CONSTRUCTION WITH REFERENCE TO PAGE 16. THEY POINT OUT A SENTENCE THERE. BUT IF YOU LOOK AT THE ACTUAL CONSTRUCTION, "A VARIABLE PERIOD OF TIME FOR WHICH THE ALERT SIGNAL PERSISTS," THEY'RE NOT DISPUTING THAT THE ASSERT SIGNAL IS VARIABLE. WHAT THEY'RE DOING IS MAKING, ESSENTIALLY, THE SAME ARGUMENT THEY TRIED TO MAKE AT CLAIM CONSTRUCTION WHICH THE COURT REJECTED. IF YOU LOOK ON PAGE 14, THEY SAID AT CLAIM CONSTRUCTION, "A VARIABLE PERIOD OF TIME FOR WHICH THE ALERT SIGNAL PERSISTS." AND THEN THEY GO ON, "AFTER A TARGET VEHICLE IS NO LONGER DETECTED AND THE ALERT SIGNAL WAS ACTIVE FOR A TIME EQUAL TO," ET CETERA. IT SEEMS LIKE THEY'RE MAKING THAT ARGUMENT AGAIN. THAT ARGUMENT HAS ALREADY BEEN REJECTED.

THEY ALSO SAY THERE'S NO THRESHOLD TIME, BUT THERE IS A THRESHOLD TIME. WE EXPLAIN THIS IN THE BRIEFS. I'M HAPPY TO GO OVER IT AGAIN. I DON'T KNOW HOW PRODUCTIVE IT IS TO REPEAT MATERIALS FROM OUR BRIEFS, BUT --

THE COURT: I HAVE IT IN MIND.

MR. HATCH: I'LL MOVE ON TO KIA THEN IN THE INTEREST OF TIME.

THEY FOCUS ON THIS IDEA THAT THE BLIND-SPOT ZONE IS FIXED. YES, IT'S FIXED. THAT'S NOT THE ISSUE THOUGH. THE ISSUE IS WHETHER THE ALERT SIGNAL IS FIXED.

SO PAGE -- THE PAGE 16 OF THEIR DEMONSTRATIVE, FOR EXAMPLE, THERE IS A FIXED ZONE. THERE'S A HYSTERESIS ZONE. AS WE KNOW FROM THE LAST HEARING, WE'RE NOT FOCUSING ON THE HYSTERESIS ZONE. ALL THAT IS DOING IS, IT'S EXPANDING THE SIZE OF THE BLIND-SPOT ZONE THAT HAPPENS ONCE A VEHICLE ENTERS THE BLIND-SPOT ZONE, THEN IT GOES OUT BY A METER. THAT'S ALL IT'S DOING. IT DOESN'T ADDRESS THE ISSUE HERE, WHICH IS WHETHER THE ALERT SIGNAL IS VARIABLE, WHICH IT IS BECAUSE THE AMOUNT OF TIME THE TARGET SPENDS IN THAT ZONE IS VARIABLE. AGAIN, THEY'RE MAKING THIS SELECTION ARGUMENT. SO TO THAT, I WOULD SAY THAT THE SYSTEM DOES SELECT THE VARIABLE SUSTAIN TIME BECAUSE IT SELECTS WHEN TO TURN ON AND OFF THE ALERT SIGNAL. THAT'S SELECTING THE TIME.

MAZDA MAKES THIS ARGUMENT. THEY REFERENCE PAGES 27 AND 28 OF THEIR BRIEF -- OR, I'M SORRY, THEIR DEMONSTRATIVES, WHICH I THINK MAKE THE

POINT HERE. FIRST BULLET ON PAGE 27, "TO DETERMINE WHEN TO ISSUE THE WARNING/ALARM, THE ACCUSED SYSTEMS USED A FIX SMALLER WARNING ZONE." AGAIN, NOT THE ISSUE. WE'RE NOT DISPUTING THAT THE ZONES ARE FIXED.

AND THEN THE NEXT POINT, "THE ALARM IS TURNED ON WHEN A TARGET VEHICLE ENTERS THE WARNING ZONE." MAZDA CANNOT CONTROL THAT. THEIR SYSTEM CAN'T CONTROL WHEN AND HOW SOMETHING ENTERS THE ZONE, BUT THEY CAN CONTROL WHEN IT TURNS ON. THE ALARM TURNS ON.

PAGE 28, "THE ALARM IS SUSTAINED UNTIL THE VEHICLE EXITS THE LARGER HYSTERESIS ZONE." IMPORTANTLY, THAT IS A VARIABLE AMOUNT OF TIME. THE TIME FROM WHEN THE VEHICLE ENTERS THE ZONE AND WHEN IT EXITS IS VARIABLE. WHAT THEY'RE DOING IS FOCUSING ON THE FACT THAT THE ZONE IS FIXED. THAT'S NOT THE ISSUE.

THE COURT: JUST A MINUTE.

THAT DOES GO BACK TO YOUR ORIGINAL STATEMENT; CORRECT?

MR. HATCH: YES, ABSOLUTELY.

THE COURT: THE TIME IS DETERMINED BY THE RELATIVE SPEED OF THE TWO VEHICLES?

MR. HATCH: YES.

AND THE SYSTEM KNOWS THAT BECAUSE THERE'S A SMALLER RADAR ZONE THEY HAVE TO TRACK.

THE COURT: I UNDERSTAND.

MR. HATCH: SO MERCEDES, THEIR MAIN ARGUMENT -- SCOTT'S MAIN ARGUMENT WAS THAT THERE'S NO EVIDENCE. I WOULD POINT THE COURT TO THE STATEMENTS OF FACT. FOR EXAMPLE, IF YOU LOOK AT 258 AND 259 -- 258, "THE BSA RADAR DETECTION ZONE SWEEPS AN ANGLE OF APPROXIMATELY 80 DEGREES."

THE RADAR DETECTION ZONE, THE 80-DEGREE ZONE, IS THE ZONE THAT THE RADAR CAN ACTUALLY TELL WHERE THE TARGET VEHICLE IS. THAT'S IMPORTANT BECAUSE 259, "ANGLE DETERMINATION IS USED BY THE BSA SYSTEM," UNDISPUTED. THIS GOES TO THIS IDEA THAT THERE'S A SMALLER DETECTION ZONE.

AND THEN THEY GO ON TO DISPUTE, 261, "WHETHER THERE'S PORTION OF THE BLIND-SPOT ZONE THAT ARE CONTAINED" -- "THAT ARE NOT CONTAINED WITHIN THE RADAR ZONE." IF YOU LOOK AT OUR BRIEF, WE LINE THEM UP SIDE-BY-SIDE. THEY'RE OBVIOUSLY NOT THE SAME, BUT THEY'RE TRYING TO DISPUTE THESE TYPES OF FACTS. THERE ARE FACTS. THEY JUST REFUSE TO CONFRONT THE EVIDENCE.

JUST BRIEFLY WITH RESPECT TO BMW, THE ARGUMENT THERE IS THAT IT'S NOT A FIXED -- I'M SORRY, IT'S NOT A VARIABLE SUSTAIN TIME BECAUSE THEY NEED TO WAIT TO SEE IF THERE'S NO CAR IN THE ZONE THREE TIMES. THAT BEGS THE QUESTION, HOW DO THEY KNOW WHETHER THE CAR IS IN THE ZONE FOR THREE TIMES? AND WHETHER THE

CAR -- IMPORTANTLY, WHETHER THE CAR IS IN THE ZONE THREE TIMES IN A ROW, THAT'S GOING TO BE A VARIABLE SUSTAIN TIME BECAUSE THAT DEPENDS ON THE RELATIVE SPEED AND HOW FAST THE CAR IS GOING, WHETHER ONE'S ACCELERATING, BRAKING, ET CETERA. THE FACT THAT THEY WAIT TO CHECK THREE TIMES, ALL THAT MEANS IS THEY WANT TO MAKE THE ACCURATE AND CORRECT DETERMINATION. IT DOESN'T MEAN THAT THERE'S NO VARIABLE SUSTAIN.

AND THEN NISSAN ESSENTIALLY MAKES THE NO-SELECTION ARGUMENT. I THINK THIS IS A CLAIM CONSTRUCTION TYPE ARGUMENT, THAT IT HAS TO BE SOME KIND OF AN ACTIVE SELECTION. THEY HAVE TO KNOW, FOR EXAMPLE, IN ADVANCE, HOW LONG THE SUSTAIN WILL BE. IT'S IMPOSSIBLE TO KNOW IN ADVANCE HOW LONG. ALL THE CLAIM REQUIRES IS THAT THEY SELECT THE TURN-OFF AND TURN-ON TIMES. AND THAT, IN EFFECT, IS A SELECTION EVEN IF THE SYSTEM DOESN'T KNOW THAT IN ADVANCE OR PUT THAT INTO A VARIABLE SOMEWHERE IN THE SYSTEM.

THE COURT: ALL RIGHT. OKAY. THANK YOU.

WHAT ISSUE WOULD YOU LIKE -- WHAT ISSUE DO YOU PROPOSE TO ADDRESS NEXT?

MR. HATCH: FROM OUR PERSPECTIVE, WE WOULD LIKE TO ADDRESS THE INVALIDITY ISSUES SINCE I THINK, FROM THE COURT'S ORDER, THE OTHER NON-INFRINGEMENT MOTIONS WERE DENIED.

THE COURT: THE 101 ISSUE IS ONE THAT YOU MAY WANT TO ADDRESS.

MR. HATCH: CORRECT.

THE COURT: THAT CERTAINLY IS A COMPLICATED PART.

MR. HATCH: MY COLLEAGUE WILL BE ADDRESSING IT NOW.

THE COURT: THAT'S FINE. THANK YOU.

MR. WANG?

MR. WANG: I'LL ADDRESS THE '775 PATENT, YOUR HONOR, AND SAVE ANY COMMENTS I HAVE ON THE '927 FOR REBUTTAL BASED ON THE COURT'S TENTATIVE.

THE COURT: THAT'S FINE.

MR. WANG: YOUR HONOR, I HAVE A FEW POINTS I WANT TO MAKE, AND I'LL TRY TO KEEP THEM SHORT.

OVERALL THOUGH, I WANT TO POINT OUT THE FACT THAT WE ARE HERE ON A 56 MOTION WHERE DEFENDANTS BEAR THE BURDEN. AND THEY BEAR THE BURDEN TO ESTABLISH INVALIDITY BY CLEAR AND CONVINCING EVIDENCE.

WHEN YOU GO THROUGH THEIR PAPERS, YOU WILL SEE NO RECOGNITION OF THAT BURDEN THAT THEY CARRY. AND THAT'S IMPORTANT.

THE PATENTS ARE PRESUMED TO BE VALID, AND THEY ARE ENTITLED TO THE PRESUMPTION OF VALIDITY.

WHEN YOU LOOK AT WHAT THEY ARGUE WITH

RESPECT TO THE '775 PATENT, YOU WILL SEE IT'S CURSORY.

THIS IS -- THERE'S ONE ADDITIONAL LINE THAT GOES TO THE NEXT PAGE -- A FEW ADDITIONAL LINES, SORRY, YOUR HONOR.

BUT THIS IS THE SUBSTANCE OF THEIR ARGUMENT ON THE '775 AS TO WHETHER THERE IS AN ABSTRACT IDEA HERE. YOU WILL SEE IN THIS ENTIRE SECTION, THERE IS NO CITATION TO EVIDENCE. THEY DON'T POINT TO ANY EXPERT TESTIMONY. THEY DON'T POINT TO ANY DEPOSITION TESTIMONY, YOUR HONOR. THIS IS ENTIRELY ATTORNEY ARGUMENT. AND THAT IS INSUFFICIENT TO MEET THEIR BURDEN, WHICH IS CLEAR AND CONVINCING.

ALL THEY DO IS THEY REFER TO "DIGITECH." AND DIGITECH IS INAPPOSITE. DIGITECH GRANTED THE 101 MOTION THERE BECAUSE THE CLAIMS DID NOT REQUIRE INPUT FROM A PHYSICAL DEVICE. YOU CAN SEE THAT FROM THE COURT'S DECISION AT PAGE 1351.

IN YOUR HONOR'S TENTATIVE ORDER, YOU FIND THAT THE '775 SIMILARLY IS NOT TIED TO A PHYSICAL DEVICE. YOUR HONOR, WE DISAGREE WITH THAT POINT. AND WHEN YOU LOOK AT THE COURT'S CLAIM CONSTRUCTION ORDER, THAT SUPPORTS OUR POSITION THAT IN FACT IT IS TIED TO A PHYSICAL DEVICE. IT'S TIED TO A COMMUNICATION LINK. AND WE SAW, DURING CLAIM CONSTRUCTION, THE COMMUNICATION LINK EXISTS ONLY IN A COMPUTER NETWORK.

AT PAGE 128 OF YOUR HONOR'S CLAIM CONSTRUCTION ORDER, THIS WAS AN UNDISPUTED FACT, "THE SPECIFICATION SUPPORTS THE AGREED CONSTRUCTION THAT THE MESSAGE IS" --

THE COURT: EXCUSE ME, CAN YOU MOVE THAT? I CAN'T SEE WHAT YOU'RE POINTING TO.

MR. WANG: SORRY.

THE COURT: I THINK YOU NEED TO ZOOM LESS.

THANK YOU.

MR. WANG: "THE SPECIFICATION SUPPORTS THE AGREED CONSTRUCTION THAT THE MESSAGE IS A COLLECTION OF BITS SENT TOGETHER IN A MESSAGE PROTOCOL."

SO CONTRARY TO WHAT DEFENDANTS SAY, THIS IS NOT ANY METHOD, ANY FORM OF COMMUNICATION. IT WAS VERY CLEAR. THE PARTIES AGREED TO THAT DURING CLAIM CONSTRUCTION THAT WHAT WE ARE COMMUNICATING ARE BITS. AND THAT EXISTS IN A COMPUTER NETWORK.

ANOTHER PART OF THE ABSTRACT IDEA ANALYSIS IS, WHETHER THESE CLAIMS ARE SO BROAD TO COVER EVERYTHING. AND THERE, AGAIN, IN THE COURT'S CLAIM CONSTRUCTION ORDER, WE'VE GONE THROUGH THIS ANALYSIS. AND THESE CLAIMS ARE IN FACT VERY SPECIFIC.

AT PAGE 123, FOR INSTANCE, THE COURT RECOGNIZED THAT THE CLAIM ITSELF DESCRIBES, IN CONSIDERABLE DETAIL, WHAT IS REQUIRED OF THE MESSAGE

RATE INTERVAL.

AND, YOUR HONOR, YOU CONTINUED AT PAGE 124 TO EXPLAIN THAT THE CLAIM ITSELF PRECISELY SPECIFIES HOW THE MESSAGE RATE INTERVAL IS USED AND HOW IT MUST RELATE TO FIRST AND SECOND TYPES OF DATA.

SO, YOUR HONOR, WHEN YOU LOOK AT CLAIM 6 OF THE '775, WHAT YOU HAVE IS A CLAIM, CONTRARY TO WHAT DEFENDANTS ARGUE, THAT IS TIED TO A SPECIFIC PHYSICAL EMBODIMENT AND IS VERY SPECIFIC TO WHAT IS BEING CLAIMED AND EXPRESSLY WITH REGARDS TO THE MESSAGE RATE INTERVAL.

THEN, YOUR HONOR, WHEN YOU GO TO THE SECOND STEP OF THE 101 ANALYSIS, DEFENDANTS SIMILARLY FAIL TO CARRY THEIR BURDEN. THIS IS AT PAGE 19 OF THEIR OPENING BRIEF. AND THIS IS THE EXTENT OF THE ARGUMENT, THAT THE '775 PATENT LACKS AN INVENTIVE CONCEPT. AS YOU SEE AGAIN HERE, YOUR HONOR, THERE'S NO CITATION TO ANY EVIDENCE, NO CITATION TO DEPOSITION TESTIMONY, NOT EVEN A CITATION TO ANY EXPERT REPORT.

AND WHEN YOU GO TO THEIR SEPARATE STATEMENT OF FACTS, YOUR HONOR, FOR BOTH STEPS, YOU WILL SEE, ALSO, AN ABSENCE OF ANY EVIDENCE GOING TO BOTH STEPS OF THE ALICE TEST, ABSTRACT IDEA AND WHETHER THERE'S AN INVENTIVE CONCEPT.

IN FACT, YOUR HONOR, WHEN YOU LOOK AT HOW

THEY ADDRESS 101, AT THE THRESHOLD, THEY FAILED TO CARRY THEIR BURDEN BECAUSE NOWHERE IN THIS ANALYSIS DO YOU SEE ANY DISCUSSION OF THE LIMITATIONS OF THE CLAIM AS AN ORDER COMBINATION. AND THAT'S REQUIRED, YOUR HONOR. NOWHERE IS THAT TERM MENTIONED IN THE ARGUMENT SECTION. AND YOU WON'T EVEN FIND IT IN THE LEGAL STANDARD SECTION. THEY SIMPLY DID NOT ADDRESS THAT CONCEPT. AND THAT IS THEIR BURDEN TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE.

YOUR HONOR, WHEN YOU LOOK AT THE RECORD AS TO WHAT SIGNAL PRESENTED, YOU WILL SEE THERE IS EVIDENCE IN THE RECORD THAT AN INVENTIVE CONCEPT IS DISCLOSED. I'LL SIMPLY POINT YOU TO WHERE THAT SHOWS UP IN THE RECORD. AND THAT'S AT EXHIBIT 8, THE SMEDLEY AMENDED VALIDITY REPORT AT PAGES 39 TO 58.

THE LAST POINT I WANT TO MAKE ON THE '775, YOUR HONOR, IS THIS IDEA OF PREEMPTION. AND THAT IS THE CONCERN THAT UNDERLIES CERTAINLY AT LEAST THE SECOND STEP OF THE ALICE TEST. THE COURT WANTS TO MAKE SURE THAT WE DON'T PREEMPT FUNDAMENTAL BUILDING BLOCKS. AND WHEN YOU LOOK THROUGH A DEFENDANTS' BRIEF, THEY MAKE ONE STATEMENT WITH REGARDS TO THE '775 AS TO PREEMPTION. AND ALL THEY SAY AT PAGE 19 OF THEIR BRIEF IS THAT THE '775 PREEMPTS THE ENTIRE ABSTRACT IDEA OF USING TWO DATA RATES AT THE SAME TIME, PERIOD, NO

CITATION TO ANY EVIDENCE, NO CITATION TO ANY EXPERT, NO CITATION TO ANY DEPOSITION TESTIMONY. ALL THAT IS, YOUR HONOR, IS ATTORNEY IPSE DIXIT ON WHETHER OR NOT THERE'S PREEMPTION.

AND THE RECORD SHOWS, YOUR HONOR, THAT IN FACT PREEMPTION IS NOT A CONCERN IN THIS CASE. WHEN YOU LOOK AT DEFENDANTS OWN DAMAGES EXPERT REPORTS, THEY OPINE THAT THERE ARE OTHER NON-INFRINGING ALTERNATIVES TO THE '775. AND WE REFER TO THOSE, YOUR HONOR, AT THE HAAS DECLARATION AT PARAGRAPH 12 THAT WAS SUBMITTED IN SUPPORT OF OUR OPPOSITION PAPERS.

ESSENTIALLY, WHAT DEFENDANTS ARGUE, YOUR HONOR, IS THAT THERE ARE OTHER COMMUNICATION PROTOCOLS THAT EXIST OUT THERE, AND THAT THERE ARE OTHER FORMATS AND DATA STRUCTURES FOR SENDING A MESSAGE.

THE COURT: I UNDERSTAND.

MR. WANG: ONE OF THE DEFENDANTS MADE AN ARGUMENT THAT YOU COULD SEND A FIRST DATA IN THE MESSAGE AND SIMPLY NOT INCLUDE THE SECOND DATA ASPECT THAT IS REQUIRED BY THE CLAIMS. IN OTHER WORDS, LEAVE A GAP.

THE COURT: ANYTHING YOU WANT TO ADD AT THIS POINT, MR. WANG?

MR. WANG: THAT'S IT, YOUR HONOR.

THE COURT: THANK YOU.

MR. LAVELLE: YOUR HONOR, JOE LAVELLE. I'LL SPEAK, I THINK, ON BEHALF OF THE DEFENDANTS.

THE CLAIM IS DIRECTED TO NOTHING MORE THAN A PROTOCOL. THE TITLE OF THE PATENT IS "A DUAL RATE COMMUNICATIONS PROTOCOL." THE SUMMARY OF THE INVENTION DESCRIBES IT AS A PROTOCOL. THE DETAILED DESCRIPTION OF THE INVENTION DESCRIBES IT AS A COMMUNICATION PROTOCOL. A PROTOCOL IS DEFINED IN THE DICTIONARY AS A DETAILED PLAN OF A SCIENTIFIC OR MEDICAL TREATMENT.

IT'S A PLAN. IT'S AN ALGORITHM. THAT'S PRECISELY WHAT THIS CLAIM IS DRAWN TO, IS AN ALGORITHM FOR TRANSMITTING TWO TYPES OF MESSAGES OVER ANY COMMUNICATION LINK AT ALL.

SO IN TERMS OF THE FIRST PART, THERE'S NO QUESTION WE'RE DEALING WITH AN ABSTRACT IDEA. WE'RE DEALING WITH A PROTOCOL.

THE SECOND PART OF THE TEST IS, IS THERE ANYTHING ELSE IN THE CLAIM SUCH THAT IT'S RESTRICTED TO CLAIMING SOMETHING LESS THAN JUST THE IDEA? AND THERE MOST CLEARLY ISN'T. THERE'S NO STRUCTURE. THERE'S NO APPLICATION. THERE'S NO MEDIA OR CIRCUMSTANCE OF WHICH IT WOULD BE USED. THERE'S NOTHING. AND SO THE CLAIM FAILS THE ABSTRACT IDEA TEST.

NOW, IN RESPONSE TO SOME OF THE ARGUMENTS

THAT PLAINTIFF MADE, FIRST OF ALL, THIS CLEAR AND CONVINCING EVIDENCE I BELIEVE IS MISPLACED, JUDGE. THIS IS A LEGAL ISSUE. AND SEVERAL OF THE DISTRICT COURT CASES IN THIS DISTRICT, THE HUGHES COMMUNICATION TEST AND MCROE (PHONETIC), I THINK AS WELL, MADE THE POINT THAT WE'RE DEALING WITH A LEGAL ISSUE, NOT A FACTUAL ISSUE, AND THAT THE CLEAR AND CONVINCING EVIDENCE NEED NOT APPLY HERE. BUT WE MEET IT EVEN IF IT DOES APPLY.

SIGNAL MAKES A BUNCH OF JUST MISTAKEN ARGUMENTS ABOUT WHAT THIS CLAIM COVERS TO TRY AND MAKE IT SPECIFIC. THEY SAY BOTH TYPES OF DATA NEED TO BE COMMUNICATED IN THE INVENTION. THAT'S JUST NOT WHAT THE CLAIM SAYS. THE LAST LIMITATION IN THE CLAIM SAYS YOU ONLY HAVE TO SEND ONE OF THE TYPES.

THEY SAY THE TWO TYPES --

THE COURT: GO BACK TO THE LEGAL ISSUE POINT YOU WERE MAKING.

MR. LAVELLE: SURE.

THE COURT: ARE YOU SAYING BECAUSE IT'S A LEGAL ISSUE, IS IT YOUR POSITION THAT THERE'S NO -- THE LEGAL ISSUE ISN'T FRAMED BY ANY FACTS?

MR. LAVELLE: NO, OF COURSE THEY'RE FRAMED BY FACTS. BUT THE FACTS ARE THE PATENT AND THE PROSECUTION HISTORY. IT'S NOT ONE THAT'S SORT OF IN

SERIOUS DISPUTE SUCH THAT SOMEBODY HAS TO CONVINCE YOU WHAT THE PATENT SAYS.

THE COURT: THANK YOU. I JUST WANT TO MAKE SURE I UNDERSTOOD WHAT YOU WERE SAYING.

MR. LAVELLE: THE PLAINTIFFS SAY THAT ALL THE DATA HAS TO BEGIN AND END AT THE SAME LOCATION. THAT'S NOT IN THE CLAIM.

THE CLAIM SAYS, AND THE SPECIFICATION ENVISIONS, HAVING MULTIPLE TYPES OF DATA ON THE BUS.

THEY ARGUE THAT THE CLAIM IS LIMITED TO A SPECIFIC ELECTRONIC COMMUNICATION. AND IT'S JUST NOT.

THEIR ARGUMENTS ABOUT WHY THERE'S SOMETHING IN ADDITION, THE INVENTIVE CONCEPT, ESSENTIALLY AMOUNT TO SAYING, THAT THE INVENTIVE CONCEPT IS A WAY TO SEND TWO TYPES OF DATA OVER THE LINK. BUT THAT'S THE ABSTRACT IDEA. THAT'S NOT THE "SOMETHING DIFFERENT."

SO, VERY BRIEFLY, I THINK YOU'VE GOT IT RIGHT. WE'RE DEALING WITH AN ABSTRACT PROTOCOL AND NOTHING ELSE IN THE PATENT, EVEN IN THE CLAIM, EVEN IF THIS OTHER STUFF IN OTHER CLAIMS ARE IN THE SPECIFICATION. THANK YOU.

THE COURT: THANK YOU, MR. LAVELLE.

MR. LAVELLE: SHOULD I GO ON TO THE '927?

THE COURT: IS THERE SOMEONE ELSE WHO WANTS TO

ADDRESS THIS SPECIFIC ISSUE?

MR. WANG, WHY DON'T I HEAR YOU IN RESPONSE THEN.

MR. WANG: THANK YOU, YOUR HONOR.

YOUR HONOR, IN THE CLAIM CONSTRUCTION CONTEXT, IT'S A QUESTION OF LAW. THERE ARE UNDERLYING QUESTIONS OF FACT. WHEN YOUR HONOR CONDUCTED THE CLAIM CONSTRUCTION IN THIS CASE, THERE WAS -- YOU ELICITED EXPERT TESTIMONY. THAT SHOULD BE NO DIFFERENT IN THIS CASE. THIS IS A QUESTION OF LAW, AND THERE CERTAINLY ARE UNDERLYING QUESTIONS OF FACT.

THIS IS A DECISION FROM JUDGE CARTER FROM THIS COURT, MODERN TELECOM VERSUS LENOVO. IT ISSUED DECEMBER 2ND, 2015. I JUST WANTED TO RESPOND TO MR. LAVELLE'S. HERE, JUDGE CARTER RECOGNIZES THAT THE COURT FINDS THAT DEFENDANT LENOVO BEARS THE BURDEN OF ESTABLISHING INVALIDITY, AND BECAUSE THIS IS A MOTION FOR SUMMARY JUDGMENT, THE COURT FINDS THE CLEAR AND CONVINCING EVIDENCE STANDARD APPLIES HERE. AND HE REPEATS THAT AT THE END, "DEFENDANT LENOVO BEARS THE" --

THE COURT: I DON'T THINK THAT'S IN DISPUTE. I THINK -- I THINK THE DISPUTE IS, HOW THE -- I UNDERSTAND THAT.

MR. WANG: THANK YOU, YOUR HONOR.

THE COURT: I DON'T THINK THAT'S NEW.

MR. WANG: OKAY. GREAT.

THE COURT: THANK YOU.

MR. WANG: THE PROBLEM HERE, YOUR HONOR, IS THAT THEY DO NOT PRESENT ANY EVIDENCE. AND WHEN YOU GO THROUGH THE BRIEFS, YOU'LL SEE THAT. AND WHEN YOU GO TO THE STATEMENT OF UNDISPUTED FACTS, YOU'LL SEE THAT AS WELL.

MR. LAVELLE SAID THAT THERE'S NOTHING MORE HERE THAN A PROTOCOL. YOUR HONOR, THAT'S GREAT. THEY HAVE DISTILLED THE CLAIM TO NOTHINGNESS. AND IN DOING SO, THEY IGNORE MANY OF THE REQUIREMENTS THAT ARE IN THE CLAIM, WHICH THE COURT HAS EXPRESSLY SAID YOU SHOULD NOT DO. AS THE COURT RECOGNIZED IN CLAIM CONSTRUCTION, THE CLAIM REQUIRES ESTABLISHING A MESSAGE RATE INTERVAL. AND THAT'S VERY SPECIFIC. THE CLAIM REQUIRES DEVOTING A PORTION OF EACH MESSAGE RATE INTERVAL TO THE FIRST AND SECOND TYPES OF DATA. THE CLAIM REQUIRES SPECIFIC LINKS FOR THE MESSAGE RATES IN RELATION TO THE RELEVANT PORTIONS OF THE MESSAGE RATE INTERVAL.

AND MR. LAVELLE ARGUED THAT THERE'S NOTHING IN THE CLAIMS THAT REQUIRES THAT THE FIRST AND SECOND DATA BE INCLUDED IN THE MESSAGE. YOUR HONOR, THAT'S A MISREADING OF THE LAST LIMITATION OF THE

CLAIM. BECAUSE ALTHOUGH THE LIMITATION REFERS TO AT LEAST ONE OF THE FIRST AND SECOND TYPES, IT'S NOT SAYING YOU ONLY HAVE TO HAVE ONE. WHAT IT SAYS IS, WITH RESPECT TO THE RESPECTIVE PORTIONS OF EACH MESSAGE RATE INTERVAL, AND THOSE PORTIONS HAVE BEEN DEVOTED EARLIER IN THE CLAIM, YOU HAVE EITHER A FIRST OR SECOND DATA.

YOUR HONOR, AS FAR AS THE SECOND STEP OF THE ALICE TEST, MR. LAVELLE SAID THERE'S NOTHING MORE. THERE'S NO STRUCTURE. THERE'S NO APPLICATION. AND I THINK I ADDRESSED THAT IN MY OPENING COMMENTS, YOUR HONOR.

THE COURT: THANK YOU, MR. WANG.

ALL RIGHT. THEN, MR. LAVELLE, YOU'RE GOING TO ADDRESS THE NEXT ISSUE?

AND THEN, MR. WANG, ARE YOU GOING TO RESPOND?

MR. WANG: YES, YOUR HONOR.

MR. LAVELLE: YOUR HONOR, JOE LAVELLE AGAIN.

I READ YOUR TENTATIVE CAREFULLY. I'M NOT GOING TO DISPUTE ANY OF THE WAY YOU READ THE CLAIM AND WHAT YOU FOUND. BUT WHAT I'M GOING TO ARGUE TO YOU, INSTEAD, IS THAT BASED ON YOUR ANALYSIS OF THE CLAIM, THIS CASE IS GOVERNED BY PARKER VERSUS FLOOK AND THE MAYO CASE, AND THAT YOU SHOULD FIND, IN APPLYING THOSE

CASES, THAT THIS CLAIM IS ABSTRACT.

FIRST OF ALL, THERE'S NO QUESTION THAT THE CLAIM IS DRAWN TO AN ALGORITHM. FIGURE 5 OF THE PATENT, IF WE -- DO WE HAVE PERMISSION TO PUT UP FIGURE 5, PLEASE?

THE SERIES OF STEPS THAT YOU CORRECTLY IDENTIFIED ARE ALL SHOWN IN FIGURE 5. AND THE PATENT DESCRIBES FIGURE 5. IT SAYS, "FIGURE 5 IS A FLOW CHART REPRESENTING AN ALGORITHM FOR CARRYING OUT THE INVENTION."

SO WE CAN GO THROUGH IT, IF IT WOULD BE HELPFUL. BUT EACH STEP OF THE METHOD STEP IS DISCLOSED IN THIS ALGORITHM. AND THE PATENT TELLS US THAT IT IS AN ALGORITHM FOR CARRYING OUT THE INVENTION. THE ALGORITHM, OF COURSE, IS A COMPUTER PROGRAM THAT RUNS ON THAT MICROPROCESSOR, 28 IN FIGURE 2. A COMPUTER PROGRAM IS A PARADIGM OF A MATHEMATICAL EXPRESSION OR ABSTRACT IDEA.

NOW, FOR SURE, THE CLAIM SAYS THAT THIS ALGORITHM RUNS IN THE ENVIRONMENT OF A BLIND SPOT DETECTION SYSTEM. AND, FOR SURE, THE PREAMBLE, YOU HAVE ALREADY HELD, IS PART OF THIS CLAIM AND IS HARDWARE.

BUT WHAT I'M GOING TO SUGGEST TO YOU, YOUR HONOR, IS THAT THAT'S NOT ENOUGH. PARKER VERSUS

FLOOK SEEMS TO BE CONTROLLING HERE. IN PARKER, THE INVENTOR STARTED WITH A CONVENTIONAL CATALYTIC CONVERTER THAT WAS CONTROLLED BY COMPUTERS THAT SET-OFF ALARMS IF IT WAS TOO HOT OR THE PRESSURE WAS TOO HIGH. THE INVENTION WAS MODIFYING THE SOFTWARE TO MAKE THE ALARMS VARIABLE SO THAT THEY COULD CHANGE OVER TIME.

ALL RIGHT. THE COURT -- THE SUPREME COURT TOOK THE CASE AND SAID, THERE'S NO QUESTION THAT WHAT WE HAVE AT THE HEART OF THIS IS AN ABSTRACT IDEA, AN IMPROVEMENT TO A COMPUTER PROGRAM. SO THAT IN THE WAY WE SAY IT IN THE MAYO WORLD, THE INVENTION IS DRAWN TO AN ABSTRACT IDEA JUST AS IT WAS IN PARKER AND JUST AS IT WAS IN MAYO.

THE SUPREME COURT IN PARKER THEN LOOKED AT THE REMAINDER OF THE CLAIM AND SAID IT'S A CONVENTIONAL CATALYTIC CONVERTER. THE CATALYTIC CONVERTER WASN'T CHANGED. ALL THAT WAS DONE WAS TO TWEAK THE SOFTWARE.

THAT'S THE FACTS HERE, YOUR HONOR. WHAT HAPPENED -- THE BLIND-SPOT SYSTEM IS CONVENTIONAL. IT HAD SOFTWARE BEFORE. AND THAT SOFTWARE WAS IMPROVED BY THE USE OF AN ABSTRACT IDEA, THE VARIABLE SUSTAIN TIME. AND ALL THE CLAIM CLAIMS IN ITS FORM IS A BUNCH OF SOME STEPS THAT OPERATE IN THE CONTEXT OF CONVENTIONAL HARDWARE.

SO JUST AS IN PARKER -- JUST AS IN MAYO, IN THE MAYO CASE, THE SUPREME COURT SAID, WELL, THERE'S AN ABSTRACT IDEA. IT WAS A LAW OF NATURE, HOW YOUR BODY RESPONDS TO A CERTAIN DRUG. ONCE IT SAID THERE WAS AN ABSTRACT IDEA, IT SAID, ALL THE REST OF THIS CLAIM IS IS DOCTORS ADMINISTERING THE DRUG AND SEEING HOW IT REACTS, AND THAT THAT'S CONVENTIONAL. SO UNDER THE SAME SORT OF ANALYSIS, THE INVENTION IS ABSTRACT. IT'S DRAWN TO AN ABSTRACT IDEA. AND THE REMAINDER OF THE HARDWARE IS CONVENTIONAL.

SO I THINK IF YOU APPLY PARKER AND MAYO, THAT THAT DRIVES THE OUTCOME HERE.

AND I GRANT YOU, IT PASSES THE MACHINE-OR-TRANSFORMATION TEST. SO DID THE INVENTION IN PARKER AND THOSE OTHER FACTORS. ALTHOUGH TRUE, I DON'T THINK THEY GET TO THE WAY WE SHOULD ANALYZE THIS CLAIM UNDER THE SUPREME COURT CASES. THANK YOU.

THE COURT: ALL RIGHT.

ANY OTHER DEFENSE COUNSEL WANT TO ADD TO THIS?

WHO IS GOING TO ADDRESS THIS, MR. WANG?

MR. WANG: YES, YOUR HONOR.

YOUR HONOR, MR. LAVELLE'S ARGUMENT IN RESPONSE TO THE COURT'S TENTATIVE WAS SOLELY THAT THE CLAIMS OF -- THE ASSERTED CLAIMS OF THE '927, CLAIMS 1,

2 AND 6, ARE SOLELY DIRECTED TO AN ALGORITHM. AND HE RELIES EXTENSIVELY ON PARKER V. FLOOK. IN PARKER V. FLOOK, THAT CASE DID SAY THAT THE CLAIMS IN THAT CASE WERE INELIGIBLE. AND IT DID SO BECAUSE THOSE CLAIMS WERE SIMPLY CONVERTING BCD NUMERALS TO PURE BINARY NUMERALS. AND THERE WERE NO OTHER LIMITATIONS ON IT. IT PREEMPTED WHOLLY THE USE OF THAT ALGORITHM.

IF WE'RE GOING TO LOOK TO SEE WHEN ALGORITHMS MAY BE ELIGIBLE OR INELIGIBLE - AND, CERTAINLY, WE'RE NOT CONCEDING THAT THIS IS PURELY AN ALGORITHM WHATSOEVER - THE MORE APPROPRIATE CASE IS DIAMOND VERSUS DIEHR. AND THAT'S THE RUBBER CURING CASE. AND THAT'S A CASE THAT RECOGNIZES THAT, SURE, A CLAIM CAN INCLUDE AN ALGORITHM, CAN DEPEND ON AN ALGORITHM. BUT IF IT'S A SPECIFIC APPLICATION OF THAT ALGORITHM AND IT HAS OTHER LIMITATIONS, THEN, SURE, IT'S ELIGIBLE UNDER 101. AND THAT'S THE SITUATION THAT WE HAVE HERE, YOUR HONOR.

BUT WHAT I ALSO WANTED TO REITERATE, YOUR HONOR, IS, THAT'S ALL YOU HEARD FROM THE DEFENSE COUNSEL. AND THEIR ANALYSIS IN THE '927 IS REALLY NO DIFFERENT THAN IT WAS WITH THE '775. AS YOU GO THROUGH THERE, YOUR HONOR, THEY, AGAIN, PRESENT NO EVIDENCE TO SUPPORT THE BURDEN THAT THEY BEAR ON THIS CASE. IN FACT, THEY VACILLATE ON WHAT EXACTLY THE ABSTRACT IDEA

IS. IN THEIR OWN MOTION PAPERS, YOUR HONOR, THERE ARE VARIOUS FORMULATIONS OF THAT. "USING A VARIABLE SUSTAIN TIME IN A BLIND-SPOT WARNING SYSTEM FOR AN AUTOMOBILE," THAT SHOWS UP AT PAGE 20.

THEN AT PAGE 22, "VARYING THE LENGTH OF TIME THAT AN ALERT STAYS ON BASED ON THE RELATIVE SPEED OF TWO VEHICLES."

THEN AT PAGE 24, THEY SIMPLY SAY, "USE OF A VARIABLE SUSTAIN TIME."

AND THEY REPEAT THAT IN THE REPLY BRIEF, "ABSTRACT IDEA," OPEN PAREN, "VARIABLE SUSTAIN TIME," CLOSED PAREN.

AND WHEN YOU LOOK AT THE EXPERTS, THE EXPERTS, SIMILARLY, CHARACTERIZE THE SO-CALLED "ABSTRACT IDEA" DIFFERENTLY. HONDA'S EXPERT, MR. ROSENBLUM, HE SAID, "THAT THE CONCEPT OF OBSERVING AN OBJECT OF INTEREST AND NOTIFYING ANOTHER OF IT."

AND WHEN WE SAW IN VW'S EARLIER 12(C) MOTION, THERE THEY SAID, "THE ABSTRACT IDEA WAS MEASURING AND CALCULATING PHYSICAL PARAMETERS USING CONVENTIONAL SYSTEMS OR METHODS IN GENERATING AN ALARM OR CONTROL SIGNAL BASED ON THOSE MEASUREMENTS AND CALCULATIONS." AND THAT WAS AT THEIR BRIEF AT PAGES 15 TO 16 IN DOCKET 101-1.

WHAT THIS SHOWS, YOUR HONOR, IS THAT

DEFENDANTS CAN'T EVEN AGREE AMONG THEMSELVES OR EVEN IN THEIR OWN BRIEF AS TO WHAT THE ABSTRACT IDEA IS. AND, CERTAINLY, THAT CANNOT BE CLEAR AND CONVINCING EVIDENCE OF AN ABSTRACT IDEA.

MOREOVER, WHAT THEY'VE DONE IS, THEY HAVE, AGAIN, DISTILLED THE CLAIM TO BASICALLY OBLIVION.

AND WHAT THEY HAVE IGNORED IS THAT THE CLAIMS REQUIRE A RADAR SYSTEM, WHICH THE CLAIM CONSTRUCTION ORDER PULLED IN THROUGH THE PREAMBLE. THAT THE CLAIMS REQUIRED DETECTING A VEHICLE IN A BLIND SPOT. THAT THE CLAIMS IMPROVE OR INCREASE A ZONE OF COVERAGE. THAT THEY REQUIRE DETERMINING A RELATIVE SPEED. AND THAT THE CLAIMS ARE NOT SIMPLY ABOUT VARIABLE SUSTAINED TIMES, BUT ARE DIRECTED MORE NARROWLY TO SELECTING A VARIABLE SUSTAIN TIME AS A FUNCTION OF RELATIVE VEHICLE SPEED.

YOUR HONOR'S CLAIM CONSTRUCTION ORDER AT PAGE 8 RECOGNIZES THAT THESE ARE IMPORTANT ELEMENTS OF THE CLAIM THAT DEFENDANTS SIMPLY OVERLOOK.

AND DEFENDANTS DON'T EVEN BOTHER TO ADDRESS THE DEPENDENT CLAIM, CLAIM 2, WHICH REQUIRES NOT SIMPLY A VARIABLE SUSTAIN TIME, YOUR HONOR, BUT THAT IS AN INVERSE FUNCTION OF THE RELATIVE VEHICLE SPEED. AND CLAIM 6, WHICH REQUIRES A THRESHOLD TIME AS A FUNCTION OF THE HOST VEHICLE SPEED.

THESE ARE DEFICIENCIES, YOUR HONOR, THAT DEFENDANTS CANNOT MEET AT THE OUTSET, AND IT SHOULD RESULT IN THE DENIAL OF SUMMARY JUDGMENT MOTIONS ON THAT.

DEFENDANTS -- AS FAR AS THE SECOND STEP, YOUR HONOR, I WANTED TO POINT OUT, AGAIN, THAT THERE'S NO ANALYSIS OF AN ORDER COMBINATION, NO REFERENCE TO THAT REQUIREMENT WHATSOEVER.

AND FOR THE '927 PATENT, YOUR HONOR, I'LL POINT YOU TO WHAT THE PLAINTIFFS HAVE SUBMITTED AT EXHIBIT H IN THE OPPOSITION BRIEF THAT SUPPORTS THAT IN FACT THERE IS AN INVENTIVE CONCEPT DISCLOSED. AND THAT ALL DEFENDANTS HAVE DONE IS TO STRIP AWAY ALL THE ELEMENTS OF THE CLAIM TO RELY SIMPLY ON THE VARIABLE SUSTAIN TIME. YOUR HONOR, WHICH I WILL POINT OUT THAT THEIR OWN EXPERT HAS ACKNOWLEDGED IS NEW. CERTAINLY THAT DOESN'T TRANSLATE DIRECTLY TO AN INVENTIVE CONCEPT. BUT THEY DON'T SEEM TO DISPUTE THAT THAT ASPECT OF THE CLAIM IS NEW.

THANK YOU, YOUR HONOR.

THE COURT: THANK YOU, MR. WANG.

MR. LAVELLE?

MR. LAVELLE: MAY I?

THE COURT: BRIEFLY.

MR. LAVELLE: JUST THREE POINTS.

FIRST, TO CLEAR UP THE CASES, PARKER VERSUS FLOOK WAS NOT THE CASE THAT HAD TO DO WITH THE BINARY CODED DECIBELS. THAT WAS GOTTSCHALK VERSUS BENSON. I THINK COUNSEL JUST MISSPOKE.

BUT PARKER WAS THE CATALYTIC CONVERTER THAT WAS IMPROVED BY IMPROVING THE SOFTWARE AND NOTHING ELSE.

DIAMOND VERSUS DIEHR, IT'S INTERESTING TO THINK ABOUT. BUT THE DIFFERENCE WHEN YOU READ THE CASE IS, THAT THE INVENTOR IN DIAMOND IMPROVED THE MOLD. HE WAS THE FIRST PERSON WHO COULD PUT A THERMOCOUPLE, A PIECE OF HARDWARE IN THE MOLD. AND HE HAD A NOVEL MOLD THAT SIMPLY ALSO USED SOME SOFTWARE. THAT'S PATENTABLE. THAT'S NOT REALLY AN ISSUE THERE.

THE LAST POINT IS, COUNSEL ACCUSED US OF IGNORING THE HARDWARE LIMITATIONS. WE MOST CERTAINLY ARE NOT. THERE ARE HARDWARE LIMITATIONS IN THIS CLAIM. BUT THEY ARE CONVENTIONAL. AND UNDER PARKER AND MAYO, THEY AREN'T ENOUGH TO MAKE THE CLAIM DRAWN TO AN INVENTIVE CONCEPT THAT'S SIGNIFICANTLY DIFFERENT FROM THE IDEA.

THE COURT: ALL RIGHT.

MR. LAVELLE: THANK YOU, YOUR HONOR.

THE COURT: WHAT IS THE NEXT ISSUE?

MR. HATCH: IN KEEPING WITH THE '775, WE WOULD

LIKE TO ADDRESS THE NON-INFRINGEMENT ARGUMENT AND INVALIDITY ALSO.

THE COURT: HERE'S WHAT WE NEED TO FOCUS ON JUST A LITTLE BIT IN TERMS OF TIMING. WE CAN GO ABOUT ANOTHER 50 MINUTES. I WANT YOU TO BE MINDFUL OF THAT.

MR. PABIS: RON PABIS, YOUR HONOR.

I THINK IT WOULD BE THE PREFERENCE OF MOST OF THE DEFENDANTS TO DEAL WITH THE '007 BEFORE WE RUN OUT OF TIME.

THE COURT: LET'S DO THIS: LET'S TAKE FIVE MINUTES. AND I'D LIKE YOU TO CONFER A BIT, JUST TO GIVE THE REPORTER A BRIEF BREAK.

ON THE '707, IF YOU HAVEN'T ALREADY, I WOULD LIKE THE DEFENDANTS -- LET'S PUT IT THIS WAY:

WE HAVE ABOUT 50 MINUTES LEFT. I'LL ALLOCATE THAT BETWEEN THE TWO SIDES HERE.

NOW, I'D LIKE TO GET -- I'D LIKE TO HEAR FROM YOU ON THE '707.

AND FROM YOU ON THE '775.

DO YOU THINK YOU CAN DO THAT IN THAT AMOUNT OF TIME?

MR. HATCH: YES, YOUR HONOR.

THE COURT: JUST ONE SECOND.

WE CAN KEEP GOING. GO AHEAD.

MR. HATCH: ON THE NON-INFRINGEMENT FOR THE

'775 PATENT, WE WANTED TO ADDRESS WHAT LOOKS LIKE AN ARGUMENT THAT MAYBE WAS THE COURT'S. AND I DON'T KNOW THAT IT WAS RAISED BY ANY OF THE PARTIES OR AT CLAIM CONSTRUCTION. IT'S THIS IDEA THAT THE WORD "ONLY" IS A WORD OF EXCLUSION -- I'M READING FROM PAGE 4. I'M SORRY, PAGE 4 OF THE TENTATIVE. "IT'S A WORD OF EXCLUSION THAT INDICATES THAT NOTHING OTHER THAN A FRAGMENT OF A COMPLETE MESSAGE CAN BE FORMED." I DON'T THINK THIS WAS AN ARGUMENT ANY OF THE DEFENDANTS HAD MADE ON NON-INFRINGEMENT. SO PERHAPS THE COURT NOTICED THIS ISSUE AND ADDRESSED IT.

I WANT TO SAY, FIRST OF ALL, THAT THAT'S NOT HOW ANY -- IT'S NOT HOW SIGNAL OR ANY OF THE DEFENDANTS HAD READ THIS CLAIM. THE TERM ONLY MEANS THAT IT'S POSSIBLE TO SEND A FRAGMENT -- ONLY A FRAGMENT AS OPPOSED TO A COMPLETE MESSAGE. BUT IT DOESN'T MEAN THAT ONLY A FRAGMENT CAN BE SENT. SO, REALLY, THIS IS SORT OF A NEW CLAIM CONSTRUCTION FROM THE COURT, I WOULD SAY, WHERE THAT PHRASE IN CLAIM 6 AT COLUMN 6, LINE 37, "PROVIDING THE SECOND TYPE OF DATA AT A SECOND MESSAGE RATE SUFFICIENT TO FORM ONLY A FRAGMENT OF A COMPLETE MESSAGE." EVERYBODY IN THIS CASE, UP TO THIS POINT, HAS READ THAT AS MEANING THAT IT'S POSSIBLE TO SEND ONLY A FRAGMENT OF A COMPLETE MESSAGE IN THERE, BUT NOT THAT THAT'S THE ONLY THING

THAT CAN BE SENT.

THE COURT: I UNDERSTAND. I'LL LOOK AT THAT.

MR. HATCH: OKAY. I'LL JUST POINT OUT, IN THE SPECIFICATION AT COLUMN 3, LINE 61 THROUGH THE TOP OF COLUMN 4, THE REST OF THAT PARAGRAPH, IT INDICATES THAT THIS INVENTION NEEDS TO BE FLEXIBLE, ESPECIALLY WITH RESPECT TO MESSAGE STRUCTURE AND LENGTH. AND THAT THIS WAS NOT INTENDING TO FIX THE LENGTH OF A MESSAGE TO BE SOME -- SOMETHING GREATER THAN EVEN ONE BIT.

THE COURT: OKAY.

MR. HATCH: THEN WITH RESPECT TO THE DECOTIGNIE REFERENCE, IT SEEMS THE COURT'S TENTATIVE OPINION IS BASED ON THIS IDEA THAT THERE'S A DISCLOSURE SOMEWHERE IN THERE OF A MESSAGE. AND OUR ARGUMENT WAS NOT THAT IT DIDN'T MENTION MESSAGES OR TALK ABOUT MESSAGES IN THE ABSTRACT. IT DOES. IT JUST DOESN'T SAY ANYTHING ABOUT THIS ISSUE OF FRAGMENTATION OR COMPLETE.

SO WE KNOW THAT KOOPMAN TESTIFIED AT DEPOSITION THAT, IN FIGURE 6, THOSE LITTLE BOXES IN THERE ARE MESSAGES. BUT YOU CAN SEE THERE'S NO MESSAGE THERE -- IF THAT'S THE CASE, THERE'S NO MESSAGE THERE THAT'S EVEN FRAGMENTED. EACH ONE IS A COMPLETE BOX. AND THAT'S REALLY ALL THE DETAIL WE HAVE IN HERE ON THIS CRITICAL ISSUE OF COMPLETE VERSUS FRAGMENT OF

MESSAGES.

THE COURT: THANK YOU, MR. HATCH.

DOES SOMEONE WANT TO ADDRESS THIS, OR DO YOU WANT TO MOVE TO THE '707?

MR. DOYLE?

MR. DOYLE: SCOTT DOYLE FOR MERCEDES-BENZ.

TWO POINTS THERE. FIRST OF ALL, WITH RESPECT TO DECOTIGNIE, UNDER THE CONSTRUCTIONS THAT WERE TAKEN BY THE PLAINTIFF, THERE ARE CLEARLY FRAGMENTS. THROUGHOUT THE DEPOSITION OF DR. SMEDLEY AND HIS EXPERT REPORTS, ALSO SHOWING UP IN THEIR BRIEFS, THEY TALKED ABOUT THIS ASPECT, WHEN THEY WERE READING THE CLAIM UPON FLEXRAY, THAT A FRAGMENT COULD BE SOMETHING IN THE DYNAMIC SEGMENT, WHICH WAS NOT SENT BECAUSE THERE WASN'T ENOUGH TIME TO SEND. THAT'S WHAT DECOTIGNIE DOES AS WELL. IT SAYS THAT IF THERE'S NOT ENOUGH TIME TO SEND IN THE SPORADIC PHASE, IT GETS SENT LATER ON AT THAT POINT.

ALSO, IT SEEMS THAT MR. HATCH IS RAISING AN ARGUMENT AS WITH RESPECT TO THE FACT THAT DECOTIGNIE DOES NOT DISCLOSE THE TWO DIFFERENT TYPES OF DATA RATE. IT CLEARLY DOES THAT UNDER THE DEFINITIONS THAT ARE SET FORTH BY SIGNAL AND DR. SMEDLEY. AND SO -- AND IT ALSO HAS THE TWO DIFFERENT TIME ASPECTS OF THE HIGH-PRIORITY MESSAGES, WHICH WERE VERY SIMILAR TO THE STATIC

MESSAGES OF FLEXRAY, AND THEN THE LOW-PRIORITY MESSAGES, WHICH IS AKIN TO THE DYNAMIC MESSAGES.

SO IF YOU ACTUALLY LOOK AT THE CONSTRUCTIONS THAT PLAINTIFF TAKES AND WHAT THEY MAKE IN TERMS OF HOW THEY DEFINE "DATA RATE, COMPLETE MESSAGES AND FRAGMENTS," DECOTIGNIE HAS ALL OF THE ELEMENTS OF THE CLAIM.

THEY RAISE TWO POINTS. ONE POINT THAT THEY RAISED -- AND THESE ARE THE ONLY TWO POINTS THEY MADE IN THEIR OPPOSITION, YOUR HONOR. THEY SAID, "DECOTIGNIE DOES NOT DISCLOSE DEVOTING A PORTION OF EACH MESSAGE RATE INTERVAL TO THE FIRST AND SECOND TYPES OF DATA BECAUSE SPORADIC DATA IS NOT SENT UNTIL PERIODIC DATA IS SENT." WELL, THERE'S NO GENUINE DISPUTE THERE, YOUR HONOR, BECAUSE WHILE THE PERIODIC DATA IS ALSO SENT BEFORE SPORADIC DATA, JUST LIKE FLEXRAY SENDS STATIC MESSAGES BEFORE DYNAMIC MESSAGES. NOT ONLY THAT, BUT THE REFERENCE ITSELF AT PAGE 41 SAYS, QUOTE, "DURING A MICROCYCLE, BOTH PERIOD AND SPORADIC TRAFFIC MUST BE HANDLED." SO THE TWO DIFFERENT TYPES OF DATA ARE ALWAYS HANDLED THERE.

THEY THEN SPEND A LOT OF TIME WITH RESPECT TO WHAT ARE MESSAGES. AND DR. KOOPMAN HAD ADMITTED THAT DECOTIGNIE IS MERELY A GENERIC PAPER THAT DOESN'T DISCLOSE THE SUBSTANCE OF MESSAGES. BUT HE'S

VERY CLEAR SEVERAL TIMES TO CLAIM THAT DECOTIGNIE DOES DISCLOSE MESSAGES. THESE ARE WHAT ARE CALLED "C.A.N. MESSAGES." SOMETIMES THEY'RE CALLED "VARIABLES." BUT EVEN WHEN THEY'RE CALLED "VARIABLES," THEY'RE USED INTERCHANGEABLY WITH "MESSAGES."

SO DECOTIGNIE DOES SHOW, BY CLEAR AND CONVINCING EVIDENCE, THAT IT SHOWS EACH AND EVERY ELEMENT OF THE CLAIM OF THE '775 PATENT AS CONSTRUED BY PLAINTIFF.

THE COURT: ALL RIGHT. THANK YOU, MR. DOYLE.

BRIEFLY, MR. LAVELLE, YOU HAVE SOMETHING NEW?

MR. LAVELLE: JUST ON THE NON-INFRINGEMENT OF THE '775.

I THINK JUST TWO THINGS, YOUR HONOR. FIRST OF ALL, I DON'T SEE ANY CONCERN ABOUT YOUR CONSTRUCTION OF "ONLY." THAT IS EXACTLY THE WAY THE SPECIFICATION WORKS. YOU HAVE TO HAVE AT LEAST TWO OR THREE FRAMES TO SEND THE LOW-RATE MESSAGE.

BUT THE ADDITIONAL POINT I WANTED TO POINT OUT TO YOU IS THAT, DR. SMEDLEY HYPOTHESIZES IN HIS REPORT TWO POSSIBLE WAYS TO LOOK AT WHAT'S A "MESSAGE." AND YOU ANALYZE HIS FRAGMENT HYPOTHESIS.

THE POINT I WANTED TO REMIND THE COURT IS, THERE'S NO EVIDENCE THAT FLEXRAY ACTUALLY FRAGMENTS

MESSAGES IN THE DYNAMIC SECTION. AND, IN FACT, THE EVIDENCE IS THAT IT SENDS THE WHOLE DYNAMIC MESSAGE. AND IF THERE'S NOT ENOUGH ROOM, THE WHOLE MESSAGE WAITS. SO THAT THE HYPOTHETICAL SITUATION THAT YOU ARE ANALYZING THERE, THERE'S NO EVIDENCE IT EVEN HAPPENS IN FLEXRAY.

THANK YOU, YOUR HONOR.

THE COURT: THANK YOU.

MR. HATCH, BRIEFLY?

MR. HATCH: THERE IS A DIFFERENCE BETWEEN FLEXRAY AND DECOTIGNIE.

NUMBER ONE, THIS IDEA THAT, IF THERE IS NOT ENOUGH SPACE IN THE MESSAGE -- OR THE FRAME, I SHOULD SAY, TO SEND ALL OF THE DATA, EVEN FLEXRAY HAS A RESERVATION BETWEEN STATIC AND DYNAMIC. THAT'S COMPLETELY DIFFERENT FROM DECOTIGNIE WHERE NO SPORADIC TRAFFIC WILL TAKE PLACE AS LONG AS ALL PERIODIC REQUESTS ARE PENDING. THAT'S A KEY DIFFERENCE BECAUSE THE COURT POINTS OUT IN THE TENTATIVE THAT, YES, IT'S POSSIBLE THAT THAT DOESN'T HAPPEN, AND THAT THERE IS DATA IN BOTH THE STATIC AND DYNAMIC PORTIONS. BUT THAT CAN'T HAPPEN IN FLEXRAY. AND SO THERE'S NO RESERVATION OF A SEGMENT FOR THE SECOND TYPE OF DATA, IF IT'S POSSIBLE THAT ALL OF THE MESSAGE WILL BE TAKEN UP BY THE FIRST TYPE OF DATA.

THE COURT: ALL RIGHT. ANYTHING MORE YOU WANTED TO ADD, MR. HATCH, ON THIS?

MR. HATCH: NO, YOUR HONOR. THANK YOU.

THE COURT: BRIEFLY, IF YOU WANT TIME ON THE '707.

MR. DOYLE: THIS IS JUST ONE POINT.

MR. HATCH SAID THAT THE COURT APPLIED THE WRONG DEFINITION OF, QUOTE, "SUFFICIENT TO SEND ONLY A FRAGMENT." THE COURT'S RULING IS CORRECT, YOUR HONOR. AND I JUST POINT YOU TO OUR BRIEF. WE HAVE A VERY LONG PARAGRAPH ON PAGE 23 OF OUR BRIEF THAT EXPLAINS IT ALL. THANK YOU.

THE COURT: AND I REFERRED TWICE TO "'707." I MEAN "'007."

MR. DOYLE: YES. WE'RE STILL ON THE '775; RIGHT?

THE COURT: NO, I UNDERSTAND. I JUST WANTED TO CLEAR UP WHAT I WANTED TO TURN TO.

MR. DOYLE: THANK YOU.

THE COURT: WHAT'S THE MOST EFFICIENT WAY TO PROCEED WITH THE '007 ISSUES?

MR. DOYLE: YOUR HONOR, WE'RE FINE WITH GOING FIRST ON THE '007 ISSUES.

THE COURT: THAT WORK FOR YOU, MR. HATCH?

MR. HATCH: YES, YOUR HONOR.

THE COURT: OKAY.

MR. DOYLE: OKAY. YOUR HONOR, ON THE '007 PATENT, THERE ARE -- AS WE READ IT IN YOUR TENTATIVE, YOU HAVE MADE TWO POINTS FINDING MATERIAL ISSUES OF FACT WITH RESPECT TO THE DEACTIVATION IN GOING, FOR EXAMPLE, FROM A TWO TO A ZERO. WHAT WE WOULD LIKE TO DO IS POINT TO THE RECORD WHICH CLEARLY SHOWS THAT THE 2.6 KILOGRAMS IS NOT EVER SHOWN TO BE AN UNLOCK THRESHOLD. THERE'S NOTHING IN THE RECORD TO THAT, YOUR HONOR, FOR DEACTIVATING THE AIRBAG.

THE ONLY TESTIMONY WE HAVE ON THE 2.6 KILOGRAMS IS DR. SMEDLEY'S STATEMENT THAT THE 2.6 KILOGRAMS MAY HAVE BEEN SOMETHING TO DO WITH THE SEAT-BELT TENSIONERS. WHAT I'D LIKE TO DO IS REFER YOU TO THE SMEDLEY TRANSCRIPT AT 118 TO 119, 17 TO 8 LINES.

THE COURT: DID YOU -- ARE YOU SAYING PAGE 118 AND 119?

MR. DOYLE: I'M GOING TO GO AHEAD AND PUT IT ON THE -- ON THIS.

THE COURT: SO YOU ARE PUBLISHING 118, LINE 14 THROUGH --

MR. DOYLE: YOUR HONOR, IT'S 118, LINE 17 THROUGH PAGE 119, LINE 8.

THE COURT: ALL RIGHT. GO AHEAD.

MR. DOYLE: OKAY. SO THIS WAS DURING

DR. SMEDLEY'S DEPOSITION. THE QUESTION WAS, "SO THE AIRBAG DEPLOYMENT IS ALWAYS INHIBITED WHEN YOU'RE GOING FROM ONE TO ZERO CORRECTLY -- STRIKE THAT. THE AIRBAG DEPLOYMENT HAS BEEN INHIBITED WHEN MOVING FROM CLASSIFICATION TWO TO ONE; IS THAT CORRECT?" SMEDLEY'S ANSWER WAS, "IF THE WEIGHT TRANSITIONS FROM CLASSIFICATION TWO TO ONE GOING DOWN AT THE 20-KILOGRAM THRESHOLD, THEN THE AIRBAG WOULD BE INHIBITED. QUESTION: AND IT REMAINS INHIBITED WHEN MOVING FROM ONE TO ZERO; CORRECT? ANSWER: SO IF IT'S CLASSIFIED AS CLASSIFICATION ONE AND THE WEIGHT DROPS BELOW 2.6, IT WOULD REMAIN ON INHIBITED. QUESTION: SO NOTHING HAPPENED AT 2.6? I CAN'T SAY FOR SURE WHETHER NOTHING HAPPENS AT 2.6 OR NOT. I BELIEVE THERE ARE ACTUAL THINGS THAT HAPPEN. LIKE WHAT? I THINK SOMETHING WITH THE SEAT-BELT TENSIONERS."

YOUR HONOR, THAT HAS NOTHING TO DO WITH THE DEACTIVATION OF THE AIRBAG.

AT THE SAME TIME, DR. SMEDLEY ALSO AGREED IN THE RECORD THAT THE 20 KILOGRAMS IS THE ONLY DEACTIVATION THRESHOLD. FOR THAT, WE'RE GOING TO MOVE TO THE DEPOSITION OF DR. SMEDLEY, PAGE 72, LINE 11 THROUGH LINE 19. LET'S TAKE A LOOK AT WHAT THAT SAYS.

SO I ASKED DR. SMEDLEY, "SO REFERRING TO THE FIGURE, WHEN DOES THE AIRBAG DEPLOYMENT BECOME

INHIBITED WHEN IT'S BEEN ENABLED?" HE REPLIES, "I THINK I UNDERSTAND YOUR QUESTION, WHICH IS GOOD. IF THE WEIGHT IS ABOVE 29 KILOGRAMS AND SO WE'RE -- I DON'T KNOW, PICK A NUMBER, 35. SO IT'S NOW LOCKED INTO CLASS TWO. THEN IT WILL END. AIRBAG DEPLOYMENT IS ENABLED; RIGHT? THEN IF THE WEIGHT NOW DROPS BELOW 20 KILOGRAMS OR LOWER, ANYTHING LOWER THAN THAT, IT WILL THEN INHIBIT AIRBAG DEPLOYMENT."

HERE, YOUR HONOR, IS THE GRAND TOTAL OF THE RECORD AS IT RELATES TO 2.6.

THE ONLY REASON THAT THE AIRBAG IS DEACTIVATED WHEN THE SEAT IS EMPTY IS BECAUSE EMPTY IS BELOW THE 20-KILOGRAM THRESHOLD. IT'S ALREADY OCCURRED.

WE ALSO HAVE TESTIMONY ON THE RECORD, WHICH I BELIEVE WAS MISREPRESENTED BY PLAINTIFF IN THEIR OPPOSITION. I'LL REPEAT THIS. IT WAS TESTIMONY BY DR. CHAN IN HIS REVIEW OF THE SYSTEM.

THE COURT: JUST -- YOU MEAN REALLY "MISREPRESENTED," OR ARE YOU SAYING YOU DISAGREE WITH THE INTERPRETATION?

MR. DOYLE: YES, I DISAGREE WITH THE INTERPRETATION.

THE COURT: THANK YOU.

MR. DOYLE: THEY HAD USED DR. CHAN AS SAYING

SOMETHING ALONG THE LINES OF, WHEN THE ADULT THAT'S SITTING ON THE SEAT GETS UP, THE MERCEDES OCS SYSTEM WILL TRANSITION FROM CATEGORY TWO TO CATEGORY ZERO AND DISABLE THE AIRBAG. IN SUPPORT OF THAT POSITION, THEY CITED THE TESTIMONY FROM DR. CHAN.

WHAT THEY LEFT OUT, HOWEVER, WAS THE KEY PORTION. AND I'LL READ THAT FROM DR. CHAN'S DEPOSITION IN WHICH HE SAID --

THE COURT: WHAT PAGE AND LINES?

MR. DOYLE: I ACTUALLY -- I NEED THAT.

THE COURT: READ IT NOW AND TELL ME THE LINES LATER.

MR. DOYLE: I WILL.

"SO ONCE I GET OUT OF THE CAR, I HAVE NOTHING TO DO WITH THE SYSTEM. SO, ESSENTIALLY, WHAT THE SYSTEM SEES IS THAT THE DETECTED WEIGHT OF 58 KILOGRAMS DISAPPEARS, AND IT DROPS PROBABLY SOMEWHERE CLOSE TO SOMEWHERE NEAR ZERO. AND IT IS LIKELY TO BE CLASSIFIED AS ZERO."

HERE'S THE IMPORTANT PART. "AND AS IT DROPPED BELOW 20 KILOGRAMS, THE SYSTEM DID DEACTIVATE. SO SINCE I'M NOT IN THE SEAT ANYMORE FROM -- THEN THE AIRBAG FOR THE PASSENGER SEAT IS DEACTIVATED OR INHIBITED." AND THIS IS EXHIBIT A AT 96, LINE 6 TO 14, WHICH WAS CHAN'S DECLARATION.

SO IT DOESN'T MATTER WHETHER THE WEIGHT IS JUMPING DIRECTLY FROM ONE TO ZERO, TWO TO ZERO, THREE TO ZERO. TWENTY IS ALWAYS THE DEACTIVATION THRESHOLD WITHIN THE SYSTEM.

WHAT I'D LIKE TO DO IS JUST PUT THIS UP ON THE ELMO REAL QUICKLY.

FORGIVE ME. IT SEEMS LIKE I DID SOME WRITING ON THIS.

BUT, IN ANY EVENT, IF YOU LOOK AT THIS, THE -- ACTUALLY, YOU CAN TURN THE PAGE TO -- WE'RE ON PAGE 10 OF OUR DEMONSTRATIVE, AND WE'LL LEAVE A COPY WITH YOU, YOUR HONOR.

WHAT THIS SHOWS IS THAT THE DEACTIVATION THRESHOLD IS ALWAYS AT 20. IF YOU LOOK ON THE TOP SCALE, THE TOP SCALE SHOWS THAT WE'RE GOING UP. SO YOU'RE GOING UP IN WEIGHT.

ON THE TOP SCALE, THERE'S ONLY ONE VALUE AT WHICH THERE'S A LOCK OR -- SO TO SPEAK. NOT A "LOCK," BUT SOMETHING GOING FROM, YOU KNOW, WHEN THE AIRBAG IS INHIBITED TO BEING ACTIVATED. AND THAT'S THE 29 KILOGRAMS.

COMING DOWN, THERE'S ONLY 20, WHICH IS USED AS A DEACTIVATION THRESHOLD. IT'S ONLY 20, YOUR HONOR. AND THERE'S NO 2.6 AS AN UNLOCK THRESHOLD. THERE IS NOTHING IN THE RECORD THAT SHOWS 2.6 AS AN

UNLOCK THRESHOLD OR CATEGORY ZERO. ALL THAT IS IN THE RECORD IS 20 KILOGRAMS, WE SUBMIT, YOUR HONOR.

AS I SAID BEFORE, EVEN DR. SMEDLEY TESTIFIED, I THINK IT HAS SOMETHING TO DO WITH SEAT-BELT TENSIONERS.

WE'D LIKE TO MOVE TO THE OTHER ARGUMENT WHERE YOUR HONOR FOUND THAT WAS A MATERIAL ISSUE OF FACT THAT THE 20-KILOGRAM THRESHOLD ACTUALLY CAN BE A FIRST THRESHOLD. IF WE LOOK AT HOW OUR SYSTEM WORKS -- THIS IS PAGE 9 OF OUR DEMONSTRATIVES.

AGAIN, BACK TO THE ACTIVATION SCALE. THE CLAIM ITSELF REQUIRES THAT YOU HAVE A FIRST THRESHOLD WHERE ACTIVATION IS ALLOWED.

WHAT IT SAYS IS, THAT FOR SOME PERIOD OF TIME, THERE'S A LOCK THRESHOLD AND THEN A LOCK FLAG, WHICH GETS SET AFTER SOME PERIOD OF TIME. THAT'S SHOWN BY THE UPPER PORTION OF THE DIAGRAM, YOUR HONOR.

AND WHAT THEY TRY TO DO IS COMPLETELY MISREAD WHAT'S GOING ON WITH THESE THRESHOLDS.

AGAIN, THE UPPER THRESHOLD IS THE ACTIVATION SCALE. THE LOWER THRESHOLD IS THE DEACTIVATION SCALE.

SO WHAT THEY HAVE DONE IS, AT THE -- AGAIN, AT THE VERY LAST MOMENT, THEY HAVE SAID, WELL, FIRST, YOU KNOW, IN THEIR CONTENTIONS AND DR. SMEDLEY,

THEY ALL TESTIFIED, WELL, THE FIRST THRESHOLD IS ACTUALLY 29 BECAUSE, ABOVE THAT, YOU KNOW, THE AIRBAG IS ACTIVATED. THAT'S THE THRESHOLD.

THEN IN ATTORNEY ARGUMENT, THEY HAVE CHANGED THAT AND SAID, WELL, WE GOT TO FIND -- WE POINTED OUT TO THEM IN OUR BRIEF THAT THEY'RE SAYING THE FIRST THRESHOLD AND THE LOCK THRESHOLD ARE THE SAME. BUT THE CLAIM ITSELF SAYS THE LOCK THRESHOLD MUST BE ABOVE THE FIRST THRESHOLD. SO THEY WENT SCAMPERING AROUND AND SAID, LOOK, MY GOD, THERE'S A 20 KILOGRAM. WE'LL JUST CALL THAT THE FIRST THRESHOLD FOR ACTIVATION.

THE PROBLEM IS, THAT'S NOT A THRESHOLD FOR ACTIVATION. THE THING DOESN'T ACTIVATE AT 20. THERE'S NO ACTIVATION AT ALL. THERE'S NO ALLOWANCE OF DEPLOYMENT.

WHAT HAPPENS IS, ON THE ACTIVATION SCALE, IT'S GOT TO BE ABOVE 29. ONCE IT GETS ABOVE 29, YOU LOCK IT. OKAY. AND IT STAYS THAT WAY UNLESS IT DROPS BELOW 20, WHICH IS THE UNLOCK THRESHOLD. "UNLOCK THRESHOLD," NOT FIRST "THRESHOLD FOR ACTIVATION." IT JUST DOESN'T HAPPEN THAT WAY.

NOW, THIS IS WHAT DR. SMEDLEY SAID. LET ME PULL OUT HIS -- I'VE GOT IT UP HERE. THIS IS WHAT -- CAN YOU SEE THIS, YOUR HONOR?

THE COURT: I CAN SEE IT. THANK YOU.

MR. DOYLE: OKAY. THIS IS WHAT HE SAYS. DR. SMEDLEY MADE THE FOLLOWING STATEMENT IN HIS EXPERT REPORT, QUOTE, "THE FIRST THRESHOLD CORRESPONDS TO THE MINIMUM WEIGHT AT WHICH THE AIRBAG WILL BE DEPLOYED. THE AIRBAG IS DEPLOYED AT ALL WEIGHTS HIGHER THAN THE FIRST THRESHOLD. AND, THEREFORE, THE LOCK FLAG IS ABOVE THE FIRST THRESHOLD FOR ANY PASSENGER ABOVE THE MINIMUM WEIGHT."

ALL RIGHT. LET'S GO BACK TO THIS.

WITH THAT IN MIND, IF WE GO TO THE ACTIVATION SCALE, THERE'S NOTHING HAPPENING ABOVE 20 KILOGRAMS. IT'S STILL INHIBITED. ONLY WHEN YOU REACH 29 DOES IT ACTUALLY ACTIVATE. THERE'S NO MATERIAL QUESTION OF FACT HERE. THAT'S WHAT'S GOING ON. THE CLAIM REQUIRES, IN THE ORDER OF THE STEPS, THE FIRST THRESHOLD, AN ALLOWANCE OF DEPLOYMENT, THEN A LOCK THRESHOLD, WHICH USING THE LOCK FLAG AFTER SOME PERIOD OF TIME LOCKS IN THE ACTIVATION. AND THE ONLY WAY THIS THING GETS TURNED OFF IS, IF SOMEHOW WE DROP ALL THE WAY BELOW 20. WHETHER IT'S 18, 10, 5, 4, 3, 2.6 --

THE COURT: I UNDERSTAND.

MR. DOYLE: -- THAT'S THE WAY THE SYSTEM WORKS. THAT'S WHAT'S STATED THROUGHOUT THE RECORD. THERE'S NOTHING ELSE. AND, AGAIN, 20 KILOGRAMS IS A

DEACTIVATION THRESHOLD, NOT AN ACTIVATION THRESHOLD. JUST DOESN'T WORK THE WAY THAT THEY'RE TRYING NOW TO COBBLE TOGETHER IN ARGUMENT TO STAY ALIVE.

THE COURT: THANK YOU, MR. DOYLE.

MR. DOYLE: THANK YOU, YOUR HONOR.

THE COURT: IS THIS A DIFFERENT POINT OR THIS POINT?

MR. SATCHWELL: I THINK DEFENDANTS WILL HAVE UNIQUE ARGUMENTS ON THIS PATENT.

THE COURT: I THINK IT WOULD BE MORE -- LET'S SEE.

MR. SATCHWELL: I THINK IT WILL BE SIMILAR TO THE '927 WHERE WE MAY GET SHORTER AS WE GO. IF THERE ARE POINTS OF AGREEMENT, MAYBE WE WANT TO PROCEED THE WAY WE DID EARLIER TODAY.

THE COURT: LET'S JUST -- MR. HATCH, WHY DON'T YOU -- I JUST WANT TO DO THIS IN THE MOST EFFICIENT WAY. IF YOU THINK IT'S BETTER TO -- WHAT DO YOU THINK? IS IT BETTER TO HAVE EACH DEFENDANT PRESENT THE UNIQUE ARGUMENTS, AND THEN YOU RESPOND TO ALL, OR DO THEM ONE AT A TIME?

MR. HATCH: I'M FINE TO DO IT THAT WAY.

MR. SATCHWELL: THANK YOU, JUDGE. AGAIN, MAT SATCHWELL FOR MAZDA.

I HAVEN'T READ THE MERCEDES TENTATIVE,

OBVIOUSLY; BUT IT SOUNDS LIKE THERE'S SOME SIMILAR ISSUES.

I'VE READ THE MAZDA TENTATIVE VERY CAREFULLY. WITH RESPECT, JUDGE, I THINK THERE MAY BE A VERY IMPORTANT MISAPPREHENSION IN THIS TENTATIVE REGARDING THE ACCUSED MAZDA TECHNOLOGY AND THE EVIDENCE REGARDING THAT TECHNOLOGY. SO I WANT TO JUST FOCUS ON THAT.

I'VE GOT THE CLAIM LANGUAGE UP ON THE SCREEN. THIS IS SLIDE 7 FROM THE DEMONSTRATIVE DECK I HANDED OUT EARLIER.

I DON'T THINK THERE'S ANY DISPUTE HERE, CLAIMS -- THE CLAIM 17 REQUIRES THREE THRESHOLDS.

WHAT I'M GOING TO FOCUS ON FOR NOW IS THE UNLOCK THRESHOLD. I THINK THAT'S THE SAME THRESHOLD THAT MR. DOYLE STARTED WITH.

WHAT I'D LIKE TO EMPHASIZE ON IS THAT THERE'S A VERY IMPORTANT DIFFERENCE BOTH IN THE SCOPE OF THE PATENT AND IN THE ACTUAL TECHNOLOGY BETWEEN A "THRESHOLD" AND A "RANGE." WE DON'T HAVE TO LOOK ANY FURTHER FROM THE CLAIM TO SEE THAT. THE CLAIM IS SET OUT BY DEFINING, FIRST, A THRESHOLD AND THEN WHAT HAPPENED IN A RANGE AROUND THAT THRESHOLD. THEN THERE'S A SECOND THRESHOLD AND WHAT HAPPENS IN THE RANGE AROUND IT. AND, FINALLY, THE UNLOCK THRESHOLD

AND THE RANGE AROUND IT. SO THRESHOLDS AND RANGES ARE VERY DIFFERENT.

YOU CAN CROSS A THRESHOLD INTO THE RANGE ABOVE OR BELOW THAT THRESHOLD. SOMETHING MAY HAPPEN ONCE YOU'RE IN THE RANGE, BUT IT ONLY HAPPENS IF YOU CROSS THE THRESHOLD. I'M GOING TO COME BACK TO THAT. I JUST WANT TO SET THAT OUT FROM THE BEGINNING.

IN TERMS OF THE UNLOCK THRESHOLD, WE KNOW TWO THINGS FROM THIS CLAIM. THE UNLOCK THRESHOLD IS UNIQUE IN THIS CLAIM OF ALL THREE OF THESE. IT'S THE ONLY THRESHOLD THE CLAIM TELLS US WHAT EXACTLY IT MUST BE. IT MUST BE ZERO.

THE OTHER THING WE KNOW ABOUT THE UNLOCK THRESHOLD IS WHAT HAPPENS WHEN YOU CROSS IT. IT MUST CLEAR THE LOCK FLAG SO THE AIRBAGS CAN DEACTIVATE. THOSE ARE TWO VERY IMPORTANT THINGS. TO MEET THIS CLAIM, THERE MUST BE RECORD EVIDENCE OF A THRESHOLD THAT IS BOTH ZERO AND THE LEVEL AT WHICH THE LOCK FLAG IS CLEARED SO THAT THE AIRBAGS CAN BE DEACTIVATED.

SLIDE 9, PLEASE.

IN THE MAZDA CASE, SIGNAL RELIES VERY HEAVILY ON THE -- IN FACT, EXCLUSIVELY. THERE IS NO RECORD EVIDENCE ON THIS ISSUE FROM THE DOCUMENTS, OTHER THAN THIS DIAGRAM. DR. SMEDLEY DOESN'T RELY ON ANYTHING ELSE. THIS IS IT.

THERE'S ONLY TWO THRESHOLDS HERE. AND, AGAIN, FOR CLARITY, I THINK THE JUDGE UNDERSTANDS THIS, BUT WE CAN TAKE THIS COLUMN OFF THE TABLE. THAT ONLY TALKS ABOUT DEACTIVATION LIGHTS. SO WE CAN TAKE THIS OFF. THAT'S SEAT-BELT PRE-TENSIONERS. WE'RE ONLY TALKING ABOUT THE CENTER COLUMN HERE (INDICATING).

THE CENTER IS THE AIRBAG FUNCTION. AND, HERE, WE SEE THERE'S TWO THRESHOLDS. THERE'S AN OFF THRESHOLD AND AN ON THRESHOLD.

THE KEY ISSUE THAT WE'RE DEALING WITH, AND I THINK THE MISAPPREHENSION THAT MAY COME FROM THE -- MAY BE APPARENT IN THE TENTATIVE IS ON SLIDE 10 HERE, JUDGE.

THE ISSUE WE HAVE IS THAT, IN THE MAZDA SYSTEM, ZERO, EVEN THOUGH IT'S A ROW ON THIS CHART, IS NOT A THRESHOLD. THAT'S A CONDITION. THERE'S JUST NOBODY SITTING THERE. THERE'S NO DECISION POINT THAT TAKES PLACE AT ZERO. NOTHING IN THE MAZDA CAR CHANGES AT ZERO. THE ONLY REASON IT EVEN APPEARS ON THIS CHART IS BECAUSE IT HAS TO DO WITH THE ACTIVATION LIGHTS, WHICH ARE OUTSIDE THE SCOPE OF THE CLAIM.

WE HAVE A THRESHOLD AT 30 AND A RANGE BELOW IT THAT DOES INCLUDE ZERO. BUT THERE'S NO THRESHOLD BELOW THAT 30. THERE'S JUST THE RANGE BELOW 30.

TO MAKE IT PLAIN, THE MAZDA AIRBAG -- CAN I HAVE 13, PLEASE?

THE MAZDA AIRBAG TURNS OFF AT 30 KILOGRAMS AND REMAINS OFF FOR ALL VALUES BELOW THAT THRESHOLD. AND I THINK THAT'S WHERE THE MISAPPREHENSION THAT I SEE IN THE THIRD AND FOURTH PARAGRAPHS OF THE MAZDA ORDER -- OR THE TENTATIVE ORDER COMES IN, JUDGE.

AGAIN, THE KEY HERE IS THAT MAZDA AIRBAGS TURN OFF AT 30 AND REMAIN OFF FOR ALL VALUES BELOW THAT THRESHOLD. THERE IS NO LOWER THRESHOLD THAN THAT.

CAN I HAVE SLIDE 16, PLEASE?

AND THIS IS NOT IN DISPUTE, JUDGE. THIS IS IN FACT VERY CLEARLY NOT IN DISPUTE. DR. SMEDLEY AND SIGNAL COMPLETELY AGREE WITH THAT POSITION. DR. SMEDLEY CLEARLY CONCEDED THAT POINT. IN HIS REPORT AND HIS DEPOSITION, DR. SMEDLEY URGES THAT IT'S THE 30-KILOGRAM LEVEL AT WHICH AIRBAGS ARE - HE USES THREE DIFFERENT TERMS HERE. I THINK THEY ALL MEAN THE SAME THING - DISABLED, DEACTIVATED OR THE LOCK FLAG IS CLEARED.

WE KNOW TWO THINGS ABOUT THAT UNLOCK THRESHOLD. IT HAS TO CLEAR THE LOCK FLAG AND DISABLE THE AIRBAGS. AND IT MUST BE ZERO.

DR. SMEDLEY WRITES REPEATEDLY, FIRST IN

HIS REPORT -- I'LL REFERENCE SLIDE 16, THE TOP PORTION, 134 OF THE MAZDA REPORT. DR. SMEDLEY WRITES THAT THE AIRBAG IS DISABLED WHEN THE TOTAL SEATED WEIGHT IS LESS THAN 30 KILOGRAMS, JUST AS I JUST TOLD YOU.

IF WE MOVE TO THE BOTTOM HERE IN PARAGRAPH 138, HE REPEATS HIMSELF AND SAYS, THE AIRBAG WILL DEACTIVATE IF THE TOTAL SEATED WEIGHT IS CLOSE TO 30 KILOGRAMS.

THEN AT HIS DEPOSITION, WE DRILLED DOWN ON THIS. AND WHEN GIVEN THE OPPORTUNITY TO RETREAT FROM THAT POSITION, DR. SMEDLEY DOUBLED-DOWN REFERRING TO THE ACTUAL CLAIM LANGUAGE. PAGE 222, LINE 7 THROUGH 15, I SAY, "IN THE MAZDA SYSTEM, AT WHAT RELATIVE WEIGHT PARAMETER IS THE LOCK FLAG CLEARED?"

DR. SMEDLEY SAYS, "THE LOCK FLAG WOULD BE CLEARED AT ANY VALUE OF THE RELATIVE WEIGHT PARAMETER THAT IS BELOW APPROXIMATELY 30 KILOGRAMS." THERE IS NO DISPUTE THAT AT LEAST ONE OF THE TWO CRITERIA THAT DEFINE THE UNLOCK THRESHOLD IN THE CLAIMS OCCURS IN THE MAZDA SYSTEM AT 30 KILOGRAMS.

WHAT SIGNAL HAS FAILED TO DO, AND WHAT THE RECORD EVIDENCE IS COMPLETELY SILENT ON, IS THEY FAILED TO IDENTIFY ANY THRESHOLD THAT SATISFIES BOTH REQUIRED LIMITATIONS, THAT THE UNLOCK THRESHOLD IS CLEARED AND THAT THAT LEVEL IS ZERO. THERE IS NO

THRESHOLD THERE.

NOW, THE TENTATIVE, I THINK -- WITH RESPECT, JUDGE, I THINK THIS IS WHERE THE FINAL PARAGRAPH OF THE TENTATIVE MAY HAVE MISAPPREHENSION OF THE TECHNOLOGY. WE DO NOT DISPUTE, AS THE TENTATIVE SAYS, THAT THE SYSTEM MAY NOT HAVE A CHANCE TO RECORD THE RESULTS AND SWITCH OFF THE AIRBAG UNTIL IT IS BELOW THAT 30-KILOGRAM THRESHOLD IF THE PERSON SITTING IN THE SEAT LEAPS OUT OF THE SEAT SUFFICIENTLY QUICKLY. BUT THAT IS NOT A MATERIAL FACT IN DISPUTE THAT SHOWS A POSSIBLE ISSUE THE JURY COULD FIND FOR PLAINTIFF ON.

THE REASON THAT IS TRUE IS BECAUSE -- WELL, TO THE EXTENT THAT THE AIRBAGS ARE DEACTIVATED BELOW 30 KILOGRAMS, IT IS BECAUSE A SENSING MEASUREMENT HAS BEEN TAKEN BELOW THE 30-KILOGRAM THRESHOLD. THERE IS NO ZERO-KILOGRAM THRESHOLD AT WHICH SOMETHING HAPPENS.

SO FOR THAT REASON, WE HAVE TWO INDEPENDENT GROUNDS OF NON-INFRINGEMENT IN OUR SUMMARY JUDGMENT BRIEFING ON THIS PAPER. BUT ON THAT INDEPENDENT GROUND ALONE, WE SUBMIT THAT SUMMARY JUDGMENT IS APPROPRIATE BECAUSE THERE IS NO RECORD EVIDENCE OF ANY THRESHOLD IN A MAZDA SYSTEM THAT IS BOTH ZERO AND THE LEVEL AT WHICH A LOCK FLAG IS CLEARED.

SIGNAL'S OWN EXPERT AND ALL OF THE TESTIMONY FROM SIGNAL AND THE MAZDA DOCUMENTS ARE ALL IN AGREEMENT, DEACTIVATION AND LOCK FLAG CLEARANCE TAKES PLACE AT 30.

THE COURT: NO, I UNDERSTAND. YOU'VE SAID THAT --

MR. SATCHWELL: I JUST WANT TO MAKE --

THE COURT: NO, YOU'VE MADE IT CLEAR. THANK YOU.

MR. SATCHWELL: THE ONLY ISSUE WE HAVE ON THIS PATENT IS AS TO THE POSSIBLE LOCK THRESHOLD ABOVE THE 42 KILOGRAMS. I THINK WITH THE UNDERSTANDING OF THE DIFFERENCE BETWEEN A RANGE AND A THRESHOLD, IT WOULD APPLY TO THAT ISSUE AS WELL. AND I WANT TO MAKE SURE MY CO-DEFENDANTS HAVE ENOUGH TIME TO ADDRESS THIS, SO I WILL TURN OVER THE PODIUM TO THEM, UNLESS THE COURT HAS ANY QUESTIONS?

THE COURT: NO. THAT'S FINE. THANK YOU. WE'RE RUNNING SHORT OF TIME.

MR. SATCHWELL: THANK YOU.

MR. LUJIN: YOUR HONOR, PAT LUJIN FOR NISSAN. WE'RE ALSO HANDING OUT A SET OF SLIDES.

IF YOU COULD TURN TO SLIDE 5.

SIGNAL HAS ACCUSED THREE DIFFERENT ACCUSED SYSTEMS FOR NISSAN, THREE DIFFERENT GENERATIONS

OF OUR OCCUPANT DETECTION SYSTEM. GENERATION TWO IS CATEGORICALLY DIFFERENT FROM GENERATION THREE AND FOUR. GENERATION TWO IS A PATTERN RECOGNITION BASED SYSTEM, WHEREAS GENERATION THREE AND FOUR ARE TOTAL FORCE SYSTEMS.

AND AS THE COURT KNOWS, THE CLAIM 21 IS DIRECTED TO A TOTAL FORCE SYSTEM. OBVIOUSLY, THERE'S DISAGREEMENT IN THE SUMMARY JUDGMENT BRIEFING ABOUT WHETHER OR NOT CLAIM TWO -- OR GENERATION TWO IS ACTUALLY A TOTAL FORCE SYSTEM OR A PATTERN RECOGNITION BASED SYSTEM. WE WOULD SUBMIT THAT THE CONFIDENTIAL DOCUMENTS WE SUBMITTED SHOWING IMAGES OF HUMAN PELVIS PATTERNS AND THAT SORT OF THING CLEARLY DEFEATS THE SPECULATION AND ATTORNEY ARGUMENT ON SIGNAL'S PART THAT IT COULD POSSIBLY BE A TOTAL FORCE SYSTEM.

BUT EVEN GOING BEYOND THAT, THERE ARE A NUMBER OF DETAILED LIMITATIONS OF CLAIM 21, SEVEN OF WHICH ARE SHOWN ON THE NEXT SLIDE, SLIDE 6. AND THESE ARE SEVEN OF THE THINGS THAT THE CLAIMED MICROPROCESSOR MUST BE PROGRAMMED TO DO.

NISSAN POINTED THIS OUT IN ITS BRIEFING, BUT WANTS TO REMIND YOU THAT SIGNAL HAS NOT SHOWN ANY CORRESPONDENCE IN NISSAN'S GENERATION TWO SYSTEM TO ANY OF THESE SEVEN LIMITATIONS. SO EVEN IF SIGNAL HAS RAISED A FACT ISSUE WITH RESPECT TO WHETHER OR NOT

GENERATION TWO IS A TOTAL FORCE SYSTEM, IT HAS STILL FAILED TO SHOW ANY CORRESPONDENCE IN ANY OF THE THREE CLAIMED THRESHOLDS. THE FACT THAT THERE'S A LOCK FLAG, THE FACT THAT A LOCK FLAG IS CLEARED, ALL SEVEN OF THOSE LIMITATIONS IS MUCH LIKE THE '927 PATENT WHERE THERE'S A FAILURE OF PROOF. THERE'S NOT EVEN A MODICUM OF AN ATTEMPT TO SHOW THAT THOSE THINGS ARE THERE. ALL OF THEIR EFFORT IN THE OPPOSITION WAS POINTED TO COMING UP WITH THIS HYPOTHESIS THAT GENERATION TWO COULD BE A TOTAL FORCE SYSTEM.

AND AS YOU SEE IN THE BOX ON SLIDE 7 OF OUR SLIDES, THIS IS A QUOTE FROM SIGNAL'S BRIEFING WHERE THEY SAY, "WEIGHING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO SIGNAL, A JURY COULD FIND THAT THE G2 MAT SYSTEM MAKES DEPLOYMENT DECISIONS BASED ON TOTAL FORCE."

SIMILARLY, THAT APPEARS TO BE THE UPSHOT OF PAGE 23 OF OUR TENTATIVE RULING. THE COURT SEEMS TO AGREE WITH THAT STATEMENT FROM SIGNAL, THAT WEIGHING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THEM, A JURY COULD FIND THAT THE G2 MAT SYSTEM MAKES DEPLOYMENT DECISIONS BASED ON TOTAL FORCE. AND OUR POINT WOULD BE, FOR THE PURPOSES OF SUMMARY JUDGMENT, SO WHAT? THERE ARE SEVEN OTHER CLAIM LIMITATIONS THAT AREN'T MET AT ALL. SO IT'S IMMATERIAL WHETHER GENERATION 2 IS

ACTUALLY TOTAL FORCE OR PATTERN RECOGNITION WHEN IN FACT NONE OF THE THRESHOLDS ARE SHOWN. THE LOCK FLAG IS NOT SHOWN AND SEVERAL OTHER LIMITATIONS ARE NOT SHOWN.

THE COURT: THANK YOU, MR. LUJIN.

MR. LUJIN: I WOULD LIKE TO BRIEFLY ADDRESS GENERATIONS 3 AND 4?

THE COURT: BRIEFLY. I HAVE OTHER MATTERS ON CALENDAR TODAY.

MR. LUJIN: I'LL BE VERY BRIEF.

WITH RESPECT TO GENERATION 3 AND 4, THERE ARE AT LEAST THREE LIMITATIONS THAT ARE NOT SHOWN AT ALL, THE LOCK FLAG, THE UNLOCK THRESHOLD AND CLEARING THE LOCK FLAG.

AND ON PAGE 24 OF THE TENTATIVE, THE COURT ACTUALLY SEEMS TO AGREE THAT SIGNAL HAS NOT SHOWN THAT THE LOCK FLAG IS THERE. IT SAYS, "EVEN IF SIGNAL'S IDENTIFICATION IN THE FIRST UNLOCK THRESHOLD IS CORRECT, IT DOES NOT IDENTIFY AN UNLOCK THRESHOLD THAT IS ZERO OR SUBSTANTIALLY ZERO." AS SHOWN IN OUR SUBMITTED EVIDENCE, OUR ALLEGED UNLOCK IS AROUND 10 KILOGRAMS. AND SO IT SEEMS THAT THE COURT AGREES WITH US THAT AT LEAST ONE CLAIM LIMITATION IS MISSING. THEREFORE, SUMMARY JUDGMENT SHOULD BE GRANTED ON NON-INFRINGEMENT.

THE COURT: THANK YOU.

MR. PHILLIPS: GOOD AFTERNOON, YOUR HONOR. RALPH PHILLIPS, FISH AND RICHARDSON, ON BEHALF OF THE HONDA DEFENDANTS.

YOUR HONOR, IN THE INTEREST OF TIME, I'M GOING TO START OFF WITH SOMETHING YOU HAVE ALREADY HEARD ABOUT, THE UNLOCK THRESHOLD. I WANT TO MIRROR SOME OF THE COMMENTS MADE BY MR. SATCHWELL. IN PARTICULAR, IN THE HONDA SYSTEM, THERE'S A LOT OF DISCUSSION ABOUT LEVEL ZERO AS BEING THE LOWEST LEVEL. AND THERE IS SOME CONFLATING GOING ON THERE AS WELL REGARDING THE DIFFERENCE BETWEEN THE EXTENT OF THAT LEVEL OF THAT CLASSIFICATION AS IS DESCRIBED IN THE TENTATIVE VERSUS WHAT THE THRESHOLD IS. AND THE FACTS ARE UNDISPUTED THAT THE THRESHOLD IS NON-ZERO. AND AS SUCH, SHOULD NOT CONSTITUTE AN UNLOCK THRESHOLD AGAIN. THAT IS, AS THE COURT HAS CONSTRUED IT, TO BE A FORCE PRESSURE MEASUREMENT OF ZERO OR SUBSTANTIALLY ZERO.

ALSO, YOUR HONOR, ANOTHER POINT I WANTED TO RAISE WAS THAT, ONE CLAIM LIMITATION THAT WE RAISED AS NOT BEING SHOWN -- IT WAS ABSENT FROM SIGNAL'S EXPERT REPORTS. IT WAS ALSO ABSENT -- A SPECIFIC IDENTIFICATION WAS ABSENT FROM THEIR OPPOSITION. AND, ALSO, UNLESS I'M READING WRONG, THE TENTATIVE ITSELF WAS SILENT ON. AND THAT IS, THE LOCK FLAG LIMITATION.

CLAIM 17 REQUIRES THAT THERE BE A LOCK FLAG, AND THAT IT BE SET -- ONE, TO BE SET WHEN THE RELATIVE WEIGHT PARAMETER IS ABOVE THE LOCK THRESHOLD.

THE COURT: SLOW DOWN.

MR. PHILLIPS: SO IT'S GOING TO BE DISTINCT UNDER THE LOCKED THRESHOLD ITSELF.

AND, TWO, WHEN DEPLOYMENT HAS BEEN ALLOWED FOR A GIVEN TIME.

SO THIS LOCK FLAG HAS SEVERAL OTHER LIMITATIONS TIED TO IT THAT NEED TO BE SHOWN TO DEMONSTRATE A LOCK FLAG IN AN ACCUSED SYSTEM.

FURTHER, CLAIM 17 REQUIRES THAT A SYSTEM MUST ALLOW DEPLOYMENT WHILE THE LOCK FLAG IS SET.

NOW, SIGNAL ADMITS IN ITS PAPERS THAT IT HAS NOT IDENTIFIED A LOCK FLAG OR, MORE SPECIFICALLY, QUOTE, "A VARIABLE OR MEMORY LOCATION DESCRIBED IN THE SOURCE CODE," CLOSED QUOTE, AS PART OF ITS ANALYSIS. THAT'S NOT SURPRISING. NOT ONLY BECAUSE THEY DID NOT GET A HOLD OF THE SOURCE CODE FROM THE VENDORS THAT SUPPLY IT, BUT ALSO BECAUSE THERE'S NO EVIDENCE IN THE DOCUMENTATION THAT IS OF RECORD REGARDING THE HONDA SYSTEM THAT THERE IS A LOCK OF A DEPLOYMENT DECISION. A NEW DECISION IS MADE EVERY 250 MILLISECONDS. THERE'S NO MAGIC VARIABLE OR PARAMETER OR OTHER BUTTON THAT CAN BE PUSHED THAT'S GOING TO OVERRIDE THOSE DECISIONS, AS

WOULD BE THE CASE WITH A LOCK FLAG AS IT'S TAUGHT AND CLAIMED IN THE '007 PATENT. THANK YOU.

THE COURT: THANK YOU, MR. PHILLIPS.

MR. PABIS: YOUR HONOR, RON PABIS FOR KIA.

AND FOR THE KIA SYSTEMS, WE'RE NOT TALKING ABOUT ONE MISSING LIMITATION OR TWO MISSING LIMITATIONS OR WE'RE NOT BICKERING OVER CLAIM CONSTRUCTION.

OUR SYSTEM IS FUNDAMENTALLY DIFFERENT FROM THE CLAIMED SYSTEM BECAUSE IT DOESN'T NEED A LOCKING MECHANISM AT ALL. WE USE, AGAIN, WHAT -- THAT WORD, "HYSTERESIS" OR A BUFFER ZONE. SO WE DO HAVE THRESHOLDS, BUT THEY'RE BUFFER THRESHOLDS. THERE'S NO LOCKING MECHANISM. AND WE SUBMITTED THE SWORN --

THE COURT: WHAT PAGE WERE YOU JUST --

MR. PABIS: I'M SORRY, YOUR HONOR. THAT WAS SLIDE 5.

THE COURT: GO AHEAD.

MR. PABIS: WE SUBMITTED THE SWORN DECLARATION OF OUR 30(B)(6) WITNESS, MR. KIM, WHO CLEARLY AND UNAMBIGUOUSLY TESTIFIED THAT THE SYSTEM DOES NOT USE A LOCKING MECHANISM AND, THEREFORE, DOES NOT USE A LOCK OR UNLOCK THRESHOLD. THERE IS NOTHING IN THE RECORD, OTHER THAN CONCLUSORY ARGUMENT FROM DR. SMEDLEY OR ATTORNEY ARGUMENT, TO REBUT THAT. THERE'S NO

DOCUMENTARY EVIDENCE. THERE'S NO TESTIMONY TO REBUT THAT.

AND SINCE THERE'S NO LOCKING MECHANISM, THERE CAN'T BE A LOCK FLAG. THERE CAN'T BE A LOCK THRESHOLD, AND THERE CAN'T BE AN UNLOCK THRESHOLD.

NOW, YOUR HONOR IN HIS TENTATIVE SAID THAT, "A JURY MAY FIND THAT T2H SERVES AS A LOCK THRESHOLD AS REQUIRED BY THE ASSERTED CLAIMS."

BUT T2H CAN'T BE AN UNLOCK -- OR A LOCK THRESHOLD - THIS IS PAGE 7 - BECAUSE IT'S UNDISPUTED -- LET ME BACK UP.

THERE ARE FIVE WEIGHT CLASSIFICATIONS SHOWN HERE. T2H CAN'T BE A LOCK THRESHOLD BECAUSE EVERYTHING ABOVE IT IS DEPLOYED. EVERYTHING ABOVE T2H IS DEPLOYED. EVERYTHING BELOW T2L IS INHIBITED. THIS IS SIMILAR TO, I THINK, WHAT MR. DOYLE WAS SAYING EARLIER. SINCE EVERYTHING BELOW T2L IS INHIBITED, T2L CAN'T BE THE CLAIMED UNLOCK THRESHOLD, AND T2H CAN'T BE THE CLAIMED LOCK THRESHOLD.

SO WE HAVE UNREBUTTED TESTIMONY FROM MR. KIM. AND WE HAVE THE UNREBUTTED TESTIMONY THAT -- FROM MR. KIM THAT AT T2L, WE TRANSITION FROM AN ALLOWED DEPLOYMENT TO INHIBIT DEPLOYMENT DECISION. THAT ALSO IS UNREBUTTED.

AND THEN WE HAVE THE TESTIMONY FROM

MR. SMEDLEY, WHICH IS ON SLIDE 7, WHICH IS, IF THAT IN FACT IS THE CASE, IF YOU ARE MOVING FROM AN ALLOWED TO INHIBIT DECISION AT T2L, THAT DOES NOT SATISFY THE LEVEL INDICATIVE OF AN EMPTY SEAT LIMITATION CAUSE THAT T2L, YOU MOVE FROM WR2 TO RW1. AND THAT IS A CHILD. THAT IS NOT INDICATIVE OF AN EMPTY SEAT, AS HE ADMITTED.

FUNDAMENTALLY, IT'S A SITUATION WHERE THERE IS NO LOCKING MECHANISM. AND THAT IS UNREBUTTED TESTIMONY.

THE COURT: THANK YOU.

MR. HATCH?

MR. HATCH: MINDFUL THAT WE ARE VERY CLOSE TO 12:30.

THE COURT: THAT'S FINE. I'M NOT GOING TO GIVE YOU NO TIME. GO AHEAD.

MR. HATCH: SURE.

WE AGREE WITH THE ANALYSIS IN THE TENTATIVE ON THE '007 PATENT, LARGELY. THE COURT GOT IT RIGHT IN PARSING THIS ISSUE OF WHETHER A PERSON GETTING UP WOULD TRANSITION THROUGH THE CHILD STATE, WHICH HAS BEEN BASICALLY ALL THE DEFENDANTS' ARGUMENTS.

AND MR. DOYLE STARTING WITH MERCEDES-BENZ MADE THE SAME ARGUMENT AGAIN. IF YOU LOOK AT THAT TESTIMONY THAT HE POINTED TO FROM DR. SMEDLEY, THAT'S A

SCENARIO THAT MR. DOYLE WALKED HIM THROUGH WHERE IT WENT FROM TWO TO ONE TO ZERO. SO FROM ONE TO ZERO, THAT'S THE TRANSITION THAT THAT TESTIMONY WAS ABOUT. BUT THAT'S NOT WHAT WE'RE ACCUSING. AND I THINK THE COURT GETS IT RIGHT THROUGHOUT THE TENTATIVE ON THIS ISSUE.

THE COURT: WHAT ABOUT THE MOST RECENT POSITION, AS WELL AS MR. SATCHWELL'S, CONCERNING THE -- WHAT WAS SAID ABOUT WHAT IS AND IS NOT THE SIGNIFICANT POINT IN WEIGHT? WHAT ABOUT THAT?

MR. HATCH: SO WITH RESPECT TO MAZDA, WHAT THEY HAVE DONE IS ARGUED THAT THERE IS NO LOWER THRESHOLD, I BELIEVE. LET ME GET THE -- SO THEIR ARGUMENT IS BASED ON THE FACT THAT THIS FIGURE DOESN'T HAVE A SEPARATE NUMERICAL VALUE FOR THE EMPTY, I BELIEVE.

THE COURT: WELL, THERE'S THE ONE WHERE IT WAS THE -- WHEN IT RELEASED, I THINK - I DON'T HAVE THE DOCUMENT IN FRONT OF ME NOW - 20, WHETHER THAT WAS A POINT AT WHICH IT WOULD ENGAGE.

MR. HATCH: YES. IT'S THE SAME ISSUE ABOUT WHETHER IT TRANSITIONS FROM AN ADULT THROUGH THE CHILD, BECAUSE THAT'S THE -- THAT IS THAT HIGHER THRESHOLD.

SO, FOR EXAMPLE, IF YOU LOOK AT THE MAZDA ARGUMENT, THE 30 KILOGRAMS, THAT'S NOT WHAT WE'RE

SAYING IS AN UNLOCK THRESHOLD. SO THE COURT ACTUALLY GETS IT RIGHT. IN THE TENTATIVE ON PAGE 16 WITH RESPECT TO MAZDA -- AND WE POINTED THIS OUT IN OUR BRIEFING. BUT BOTH SIGNAL AND MAZDA'S EXPERTS AGREE THAT THE EMPTY CATEGORY CORRESPONDS TO AN EMPTY SEAT OR A WEIGHT LEVEL ZERO OR SUBSTANTIALLY ZERO. SO THIS IDEA OF THE 30 KILOGRAMS, THAT'S REALLY SORT OF A RED HERRING BECAUSE THAT'S THE CUTOFF FOR WHERE -- THAT'S THE CUTOFF BETWEEN THE ADULT AND THE CHILD, NOT THE CUTOFF FOR AN EMPTY SEAT.

AND, IN FACT, THAT'S WHY YOU SEE A SEPARATE ROW IN THAT TABLE FOR MAZDA.

IT'S THE SAME ARGUMENT THAT ALMOST ALL OF THE DEFENDANTS MAKE. I CAN ADDRESS IT DEFENDANT BY DEFENDANT WALKING THROUGH THE EVIDENCE. BUT, REALLY, IT'S THE SAME ISSUE ABOUT THE CHILD.

I WOULD ALSO LIKE TO ADDRESS THE KIA ARGUMENT THAT WE HAD NOT, FOR SOME REASON, ACCUSED ONE OF THEIR SYSTEMS. SO THE ARGUMENT THAT KIA IS MAKING HERE -- THIS IS PAGE 28 ON THE TENTATIVE. AND THE COURT'S TENTATIVE HERE IS TO GRANT SUMMARY JUDGMENT WITH RESPECT TO WCS 2. THE ONLY DIFFERENCE THERE BETWEEN WCS 2 AND WCS 3-4 IS THE NUMBER OF SENSORS AND THE SUPPLIER.

WITH RESPECT TO OUR ALLEGATIONS, IT'S THE

SAME ARGUMENT -- THE EXACT SAME ARGUMENTS FOR THE 2 AND THE 3 AND 4 SYSTEM, WHICH IS WHY WE DIDN'T GO INTO DETAIL IN THE INFRINGEMENT REPORTS AND IN THE ARGUMENT AS TO SPECIFYING THE DIFFERENCES BECAUSE, REALLY, FROM OUR POINT OF VIEW, THERE AREN'T ANY. WE POINTED THIS OUT IN OUR BRIEF. BUT I WALKED THROUGH THE SPECIFICATION WITH THEIR EXPERT. COULDN'T POINT TO ANY MATERIAL DIFFERENCES. I CAN SHOW YOU WHERE WE POINTED TO WCS 2 IN OUR EXPERT REPORT. SO IT'S ONE OF THESE SITUATIONS WHERE IT'S THE SAME FUNCTIONALITY. THAT'S WHY WE DIDN'T CALL IT OUT AND SPECIFICALLY DESCRIBE IT SEPARATELY BECAUSE, FROM OUR POINT OF VIEW, THERE IS NO MATERIAL DIFFERENCE. SO THAT'S THE ONE AREA WHERE I WANTED TO POINT OUT THAT WE DISAGREE WITH THE COURT'S ANALYSIS.

THE COURT: THAT'S FINE. THANK YOU.

MR. HATCH: ARE THERE ANY OTHER QUESTIONS?

THE COURT: IS THERE ANYTHING ELSE YOU WANTED TO ADDRESS?

MR. HATCH: NO. I THINK WE'VE COVERED IT IN OUR BRIEFING. AND THE COURT GETS IT RIGHT.

THE COURT: THAT HAPPENS ABOUT 50 PERCENT OF THE TIME.

MR. PABIS: I'M SORRY, YOUR HONOR, THIS IS A NEW ARGUMENT.

THE COURT: BRIEFLY.

MR. PABIS: YOUR HONOR, WE DID HAVE SWORN TESTIMONY ON THIS ISSUE AS WELL. THE WCS 2 SYSTEM IS A DIFFERENT SYSTEM. IT IS SUPPLIED BY A DIFFERENT SUPPLIER, DIFFERENT ALGORITHM. THEY JUST DIDN'T ANALYZE IT. THEY JUST SAID, OH, WE'RE GOING TO TREAT THIS WCS 2 SYSTEM THE SAME AS THE WCS 4 SYSTEM. BUT THEY'RE DIFFERENT.

AND I WOULD POINT OUT THAT WE STILL HAVE NO EVIDENCE POINTED OUT AS TO WHERE THE LOCK THRESHOLD IS -- OR, I'M SORRY, WHERE THE LOCK FLAG IS SET OR WHERE THE LOCK FLAG IS CLEARED FOR ANY OF THE SYSTEMS.

THE COURT: ALL RIGHT. THANK YOU.

I HAVE ENOUGH DATA HERE. I'M NOT -- I THINK THAT -- GO AHEAD, 30 SECONDS.

WHAT IS IT YOU WANTED TO ADD?

MR. HATCH: THE ARGUMENT THAT THERE'S NO EVIDENCE WHERE IT'S ABOUT THE NUMBERS. THE FACT THAT THEY'RE USING VARIABLES HERE, NOT NUMBERS, THAT'S THE ARGUMENT.

THE COURT: THANK YOU.

HERE'S WHAT I NEED TO DO: I NEED -- IS THERE SOMETHING ELSE SOMEONE WANTS TO SAY IN 30 SECONDS THAT IS CENTRAL TO WHAT I'M GOING TO DO THAT I HAVEN'T HEARD?

MR. SATCHWELL: JUDGE, WE HAVE TWO CHOICES HERE. IF ZERO IN THE MAZDA SYSTEM IS THE UNLOCK THRESHOLD, THEN SOMETHING HAS TO HAPPEN THERE. THE LOCK FLAG HAS TO BE CLEARED. IF 30 -- AND THAT'S CLEARLY NOT THE CASE. EVERYONE AGREES -- DR. SMEDLEY AND EVERYBODY ELSE AGREES THAT THE LOCK FLAG IS NOT CLEARED AT ZERO. SO THAT CAN'T BE THE UNLOCK THRESHOLD. IF THE UNLOCK FLAG THRESHOLD WAS 30, THAT ALSO FAILS. IT'S NOT ZERO. IT'S NOT A RED-HERRING ARGUMENT. IT'S CENTRAL --

THE COURT: SLOW DOWN. THANK YOU.

ALL RIGHT. I HAVE -- I HAVE SOME WORK TO DO, BUT I'LL ISSUE -- I'M MINDFUL OF A FEW THINGS. WE HAVEN'T DISCUSSED THE ISSUE OF THE REQUEST FOR SOURCE CODE. BUT I HAVE -- I DON'T THINK I NEED TO HEAR ORAL ARGUMENT ON THAT. I CAN DEAL WITH THAT.

I'M MINDFUL OF THE ORDER OF TRIALS. MERCEDES IS PRESENTLY FIRST SCHEDULED FOR TRIAL. AND SO IN TERMS OF THE ORDER IN WHICH I ISSUE AN ORDER, I MAY -- DEPENDING ON THIS MATTER, AS WELL AS A FEW OTHERS THAT I HAVE ONGOING, I MAY ISSUE ORDERS IN SEQUENCE. I'M NOT SURE YET. BUT I'LL DO MY BEST TO BE EFFICIENT FOR YOU SO YOU CAN SEE, WHERE THERE ARE COMMON ISSUES, WE CAN GET THEM ADDRESSED.

IS THERE ANYTHING ELSE WE NEED TO DO

TODAY?

THE FIRST TRIAL THAT'S SCHEDULED IS MERCEDES ON --

MR. DAVIS: APRIL 19.

THE COURT: I PLAN TO ADHERE TO THAT BECAUSE MERCEDES AT THE MOMENT -- BECAUSE I THINK IT ADDRESSES A NUMBER OF THE ISSUES THAT YOU'VE BEEN DISCUSSING TODAY. SUCH THAT, DEPENDING ON THE OUTCOME IN THAT TRIAL, IT WOULD BE EFFICIENT TOWARD OTHER TRIALS THAT MIGHT FOLLOW.

IF FOR -- IF MERCEDES PREVAILS -- IF I ADHERE -- HYPOTHETICALLY, IF I ADHERE TO ALL OF THE TENTATIVES THAT I'VE EXPRESSED, AND MERCEDES IS THE FIRST TRIAL AND IT ADDRESSED THE '007 PATENT, CLAIM 21, AS WELL AS INVALIDITY OF THE '927 PATENT, ONE, TWO AND SIX, AND THOSE WERE, HYPOTHETICALLY, DETERMINED IN MERCEDES' FAVOR, THAT WOULD CERTAINLY APPLY TO SEVERAL OF THE OTHER TRIALS THAT ARE TO FOLLOW. I MEAN, NOT THE -- THE INFRINGEMENT VARIES FROM PATENT TO PATENT, PARTY TO PARTY.

SO I DON'T SEE ANY REASON NOT TO PROCEED WITH MERCEDES FIRST.

IS THERE A DIFFERENT VIEW ON THAT?

MR. DOYLE: NO, YOUR HONOR. SCOTT DOYLE REPRESENTING MERCEDES. WE'RE READY TO GO. WE

SHOULDN'T HAVE TO GO.

THE COURT: AND, MR. HATCH, YOU AGREE THAT MAKES SENSE IN TERMS OF THE FIRST TRIAL?

MR. HATCH: I THINK WE WOULD LIKE A CHANCE TO TALK TO OUR CLIENT, BUT -- MAYBE WE CAN SUBMIT SOMETHING IN A COUPLE OF DAYS?

THE COURT: I WANT TO ADHERE TO THE SCHEDULE THAT I'VE SET. BUT SOME OF THAT DEPENDS ON MY GETTING OUT THE NECESSARY RULINGS ON TODAY'S ISSUES. SO I THINK ONCE THE RULING OR RULINGS COME OUT THAT APPLY TO DIFFERENT MATTERS -- IF IT'S ALL DONE IN ONE, THEN YOU'LL HAVE IT. IF NOT, IF I GET THE FIRST ONE DONE, THEN YOU'LL HAVE SOMETHING CONCRETE TO DISCUSS AS TO, OKAY, IF WE GO TO TRIAL WITH MERCEDES, THESE ARE THE ISSUES. I THINK THAT'S MORE EFFICIENT.

MR. PABIS: WE HAVE A COMMON MOTION ON THE DAUBERT FOR DR. SMEDLEY. I ASSUME YOUR HONOR INTENDS ON DEALING WITH THAT AT THE PRETRIAL?

THE COURT: I DO.

MR. PABIS: AND IF SO, I THINK THE REST OF US WILL LIKE TO PARTICIPATE IN THAT.

THE COURT: YES, BUT I -- I WILL -- I'LL DO THE DAUBERT HEARINGS.

I'M SURE YOU WILL DO THIS WITHOUT MY TELLING YOU, BUT JUST IN CASE. I DON'T WANT TO HAVE

FIVE PEOPLE SAY THE SAME THING TO ME. SO ESTABLISH WHO IS GOING TO TAKE THE LEAD ON DIFFERENT ISSUES SO WE CAN DO THIS EFFICIENTLY. YOU HAVE DONE THAT TODAY, SO JUST DO IT AGAIN.

WE'RE GOING TO MOVE THE FINAL PRETRIAL CONFERENCE PRESENTLY SET FOR APRIL 4 TO 1:30 AS OPPOSED TO 3:00 O'CLOCK. OKAY. THAT'LL GIVE US SUFFICIENT TIME, I THINK, TO ADDRESS ALL ISSUES AS OPPOSED TO STARTING AT 3:00.

AGAIN, AS THE RULINGS FROM TODAY'S -- THESE SUMMARY JUDGMENT MOTIONS COME OUT WHETHER, AS I SAY, IN ONE OR IN A SERIES, IF THERE ARE NEW MATTERS THAT COME UP, I EXPECT YOU TO COLLABORATIVELY MEET AND CONFER. AND IF YOU THINK THERE'S SOMETHING YOU THINK THAT CAN BE DONE EFFICIENTLY, TELL ME IN A FILING THAT'S PRIOR TO THE FINAL PRETRIAL CONFERENCE, ASSUMING YOU HAVE TIME. SO I CAN HAVE IT MIND AND NOT HEAR IT FOR THE FIRST TIME THAT DAY.

ANYTHING ELSE WE NEED TO DO TODAY?

MR. FENSTER: IT WAS NOT MY UNDERSTANDING THAT WE HAD ACTUALLY -- THAT THE COURT HAD ACTUALLY DETERMINED THE SEQUENCING OF TRIALS. TO THE EXTENT YOU HAVE NOT, I WANTED TO SUBMIT A REQUEST THAT YOU CONSIDER IT IN LIGHT OF -- IN TERMS OF YOUR DETERMINATION OF SEQUENCING AS IT MAY DETERMINE WHICH

ORDERS YOU ADDRESS FIRST.

BASED ON THE TENTATIVES AND CONFERRING WITH THE CLIENT, I THINK WE WOULD REQUEST THE FOLLOWING ORDER --

THE COURT: IS THIS DIFFERENT THAN WHAT YOU SUBMITTED IN WRITING?

MR. FENSTER: IT IS, YOUR HONOR.

THE COURT: GO AHEAD.

MR. FENSTER: HONDA FIRST. SECOND, NISSAN. THIRD, MERCEDES-BENZ. FOURTH, MAZDA. AND FIFTH, KIA.

THE COURT: OKAY. I HAVE THAT IN MIND.

IS THERE ANYTHING MERCEDES OR ANYONE ELSE WANTS TO SAY, BRIEFLY?

ALL I HEARD WAS A LIST. I DON'T WANT TO HEAR EXTENSIVE ARGUMENT.

DO YOU DISAGREE WITH THIS LIST?

MR. DOYLE: WE DISAGREE. WE WANT TO GO FIRST. LET'S DO IT.

THE COURT: I HAVE YOUR LIST IN MIND.

AGAIN, AS I EVALUATE THE ISSUES THAT ARE BEING PRESENTED AND AS I'VE ALREADY STARTED TO DO, COMPARE THE DIFFERENT ISSUES PRESENTED IN DIFFERENT MATTERS, I WANT TO DO THIS EFFICIENTLY.

MR. DAVIS?

MR. DAVIS: I WANTED TO NOTE FOR THE RECORD,

YOUR HONOR, THAT AT THE LAST HEARING, I POINTED OUT THAT WE HAD A SCHEDULING CONFLICT WITH THAT FIRST LINE. AND I DON'T BELIEVE MR. FENSTER HAD ENTERED AN APPEARANCE YET. BUT IT LOOKS THAT MAY RESOLVE. BUT WE THINK THAT THE ORDER THAT WAS SUBMITTED SHOULD BE KEPT.

THE COURT: THANK YOU FOR YOUR HELP. I APPRECIATE YOUR WORKING COLLABORATIVELY AND EFFICIENTLY. AND I'LL SEE YOU AT OUR NEXT HEARING.

AND WE NEED TO PLEASE RESUBMIT THE TENTATIVES. THANK YOU. NOT "RESUBMIT," RETURN.

(END OF PROCEEDINGS)

CERTIFICATE OF OFFICIAL REPORTER

COUNTY OF LOS ANGELES)
)
STATE OF CALIFORNIA)

I, ALEXANDER T. JOKO, FEDERAL OFFICIAL COURT REPORTER, IN AND FOR THE UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT TO SECTION 753, TITLE 28, UNITED STATES CODE, THAT THE FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER, AND THAT THE TRANSCRIPT PAGE FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES.

DATE: MARCH 9, 2016

/S/ ALEXANDER T. JOKO
_____
ALEXANDER T. JOKO, CSR NO. 12272
FEDERAL OFFICIAL COURT REPORTER